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HAI v PAI & Anor

B HIGH COURT (KUALA LUMPUR) — JUDICIAL SEPARATION PETITION NO WA-33–574–10 OF 2022
EVROL MARIETTE PETERS J
12 FEBRUARY 2025

C *Family Law — Petition — Judicial separation — Wife filed judicial separation petition on ground of adultery between husband and homewrecker — Claim for spousal maintenance and division of matrimonial assets against husband — Claim for damages against homewrecker — Whether adultery proven — Whether adultery caused irretrievable breakdown of marriage — Whether* D *wife entitled to claimed damages from homewrecker — Whether spousal maintenance may be ordered in lump sum — Whether wife satisfied 'means and needs' test — Whether husband's assets stemmed from inheritance and thus excluded from matrimonial assets — Whether marital agreement existed regarding division of matrimonial assets — Whether court should adopt feminist approach to* E *division of matrimonial assets — Whether wife was entitled to half value of all matrimonial assets — Federal Constitution art 8 — Law Reform (Marriage and Divorce) Act 1976 ss 58, 59, 76 & 78 — Law Reform (Marriage and Divorce) (Amendment) Act 2017 (Act A1546)*

F The present petition was filed by the petitioner-wife ('the petitioner') to seek for judicial separation, spousal maintenance as well as division of matrimonial assets from the respondent-husband ('the respondent'), and damages from the co-respondent for the alleged adultery between the co-respondent and the respondent. The respondent, in refuting the petitioner's allegation of adultery, G insisted that his relationship with co-respondent was purely platonic. The respondent further claimed that he could not have engaged in sexual intercourse with the co-respondent due to his alleged erectile dysfunction ('ED') condition. The first main issue to be determined by the court was whether a lump sum spousal maintenance of RM1.92m should be paid to the H petitioner by the respondent. In this regard, the questions that arose were: (a) whether the petitioner had proved adultery between the respondent and co-respondent, and that such adultery had caused the irretrievable breakdown of the marriage between the petitioner and respondent; (b) whether the petitioner was entitled to claim damages in the amount of RM200,000 from I the co-respondent upon establishing the adultery; (c) whether spousal maintenance may be ordered in lump sum; and (d) whether the petitioner had satisfied the 'means and needs' assessment to justify her claim for spousal maintenance. These cond main issue for the court's determination was whether the petitioner was entitled to half the value of all the matrimonial assets. In

determining this issue, the court had to consider the following questions: (i) whether the assets acquired by the respondent during the marriage stemmed from his inheritance and thus excluded from the marital pool of assets; (ii) whether a marital agreement or arrangement existed regarding the division of matrimonial assets and the portion the petitioner would receive — in this regard, the respondent referred to a document that he claimed was his will ('the said will'), asserting that it outlined the financial arrangements he had made for the children and the petitioner; and (iii) whether the court should adopt a feminist approach to the division of matrimonial assets — with respect to this point, the petitioner relied on art 8 of the Federal Constitution.

Held:

(1) The allegation of adultery was undeniably serious in nature. As a result, while the standard of proof remained on a balance of probabilities, a higher degree of probability within that standard was applied due to the gravity of the allegation. With regard to the credibility of a witness, it was trite that no hard and fast rule could be laid down for determining the credibility or otherwise of a witness. Everything depended on the judge's belief or disbelief in the witness's story. On the assessment and evaluation of the petitioner, the court found her to be forthright and consistent. The respondent's evidence, in stark contrast, was highly questionable and lacked any credible support for his assertions and claims. His testimony was riddled with inconsistencies, rendering his account unconvincing and implausible. Taken as a whole, the respondent's testimony lacked credibility, and his conduct during cross-examination only reinforced the impression that he was being far from truthful (see paras 34, 71, 90–91 & 93).

(2) When considered collectively, the following pieces of evidence, though circumstantial, led not only to a high degree of probability, but to an irresistible inference of adultery between the respondent and co-respondent: (a) timeline and circumstances of interactions between the respondent and co-respondent; (b) undisputed occasions and opportunities the respondent and co-respondent to have engaged in a sexual relationship; (c) shared residences between the respondent and co-respondent; (d) overnight stays at the co-respondent's residence; (e) shared accommodation in Singapore; (f) attempts to conceive through in-vitro fertilisation (IVF); (g) the respondent's conduct in prioritising co-respondent over the petitioner; (h) admission of adultery made by the respondent to the petitioner; and (i) evaluation of the petitioner, respondent and co-respondent as witnesses in court (see para 94).

(3) The power of the court to order the co-respondent to pay damages to the petitioner for adultery may be found in ss 58 and 59 of the Law Reform

(Marriage and Divorce) Act 1976 ('the LRA'). The purpose of damages to be awarded to the petitioner was not to punish the co-respondent but was to compensate the petitioner. When considered as a whole, the evidence painted a compelling and troubling picture of the profound harm caused to, and loss suffered by the petitioner by the adulterous relationship between the respondent and the co-respondent. This harm extended far beyond emotional betrayal, manifesting in concrete and far-reaching consequences for the petitioner and the children. A such, the court found that damages in the sum of RM200,000 was both fair and reasonable. Further, given the considerable financial burden incurred by the petitioner in pursuing her legal rights and seeking justice, the court ordered the co-respondent to pay the petitioner legal costs amounting to RM50,000 (see paras 95–96 & 117–118).

(4) In determining whether to award spousal maintenance to the petitioner, the court exercised its discretion not only by considering who was responsible for the breakdown of the marriage but also by applying the 'means and needs' test as set out in s 78 of the LRA. In the present case, the court opined that instead of an ongoing monthly spousal maintenance, the petitioner was entitled to receive a lump sum payment, for the following reasons: (a) at the advanced age of over 72 years old, it was neither practical nor sustainable for the petitioner to rely on monthly payments over an extended period; (b) a complete and final separation between the parties was the most beneficial course of action; and (c) the respondent's established pattern of non-compliance with court's orders made it clear that ongoing payments would likely present enforcement challenges. Given these circumstances, a lump sum payment was not only a more practical and fair solution, but also one that aligned with the interests of justice (see paras 124–126 & 130–131).

(5) Although the court agreed that a lump sum payment was justified, the court disagreed with the proposed monthly amount of RM8,000. After eliminating unnecessary expenses and adjusting certain figures, the actual amount required for the petitioner's monthly spousal maintenance was RM5,142, which, when rounded, amounted to approximately RM5,000. Although the interim court order issued in May 2023 mandated a monthly payment of RM3,000 as spousal maintenance, considering that the respondent was responsible for the breakdown of the marriage, the court found it appropriate to increase the petitioner's monthly spousal maintenance from RM3,000 to RM5,000 (see paras 133 & 138–139).

(6) The court based its calculation on the average between the petitioner's current age and the typical life expectancy of an ethnic Chinese female in Malaysia, which was approximately 80 years old. At the time the decision was delivered, the petitioner was 72 years and seven months old. Using

this approach, the court decided that spousal maintenance should be calculated up to the petitioner's 76th birthday, which amounted to 41 months. This method ensured that the lump sum payment remained reasonable, proportionate, and aligned with practical considerations regarding the petitioner's age and expected lifespan. Applying the monthly amount of RM5,000 over the 41-month period calculated, the total lump sum spousal maintenance payable to the petitioner amounted to RM205,000 (see paras 141–143).

(7) In the present case, it was undeniable that the respondent had indeed inherited RM440,000 from his father, but these assets had been intermingled with acquisitions made during the course of the marriage and were utilised for the benefit of the respondent, petitioner and the children. As a result, the original inheritance could no longer be distinctly identified or traced to its initial form. Given this commingling and the nature of the assets' integration into the matrimonial estate, the court was of the view that they should be treated as part of the shared matrimonial assets rather than as solely derived from the respondent's inheritance (see para 153).

(8) The court could not accept the respondent's reliance on the said will as a marital agreement for the following reasons: (a) the 'will' referred to by the respondent appeared highly questionable — in this regard, the bundle of documents filed by the respondent contained two versions of the 'will', raising concerns about its authenticity and reliability; and (b) a will could not be considered an agreement because it was inherently a unilateral document created solely by the testator. Hence, this purported 'will', relied upon by the respondent, could not be taken into account in determining the petitioner's share of the matrimonial assets (see paras 158–161).

(9) Unlike established legal doctrines which were grounded in statutes and precedents, a feminist approach risked favouring one gender over the other, undermining the core principle of justice for all. Courts must apply fair and consistent legal principles rather than aligning with any subjective social or political ideology. The role of the court was to ensure that every decision was based on a comprehensive and objective assessment of the facts and circumstances of each case, rather than relying on preconceived notions or generalisations about gender roles. A one-size-fits-all approach would be inadequate, as it would fail to acknowledge the complexities and nuances that shape each case. A thorough individualised assessment would help prevent injustices and would ensure that legal rulings accurately reflect the realities of each case. The refore, it was essential to adopt a fair rather than a feminist approach to the distribution of matrimonial assets (see paras 166 & 168–169).

(10) The task of dividing matrimonial assets was prescribed by s 76 of the LRA. Section 76 of the LRA was amended via the Law Reform (Marriage and Divorce) (Amendment) Act 2017 (Act A1546) with the purpose to acknowledge and give legal recognition to the often-overlooked non-financial contributions made by wives during the course of a marriage. In the present case, based on the evidence adduced, the court opined that the matrimonial assets should be divided equally between the petitioner and the respondent for the following reasons: (a) the petitioner's direct and indirect contributions; (b) the petitioner's contributions to the welfare of the family; (c) the petitioner's sacrifices for the respondent's business ventures; (d) the longevity of the marriage; and (e) fairness and equity in asset division — fairness dictated that both parties should be adequately compensated for their contributions, regardless of whether those contributions were financial or non-financial (see paras 145–147, 170–172 & 175–177).

[Bahasa Malaysia summary

Petisyen semasa difailkan oleh pempetisyen-isteri ('pempetisyen') untuk menuntut pemisahan kehakiman, nafkah suami isteri serta pembahagian aset-aset perkahwinan daripada suami responden ('responden'), dan ganti rugi daripada responden bersama atas dakwaan perzinaan antara responden bersama dan responden. Responden, dalam menyangkal dakwaan perzinaan oleh pempetisyen, menegaskan bahawa hubungannya dengan responden bersama adalah platonik semata-mata. Responden seterusnya mendakwa bahawa dia tidak boleh melakukan hubungan seksual dengan responden bersama kerana mengalami disfungsi erektil ('ED'). Isu utama pertama yang perlu ditentukan oleh mahkamah ialah sama ada bayaran nafkah sekali gus berjumlah RM1.92 juta perlu dibayar kepada pempetisyen oleh responden. Dalam hal ini, persoalan-persoalan yang timbul ialah: (a) sama ada pempetisyen telah membuktikan perzinaan antara responden dan responden bersama, dan bahawa perzinaan tersebut telah menyebabkan kepecahbelahan perkahwinan yang tidak dapat dipulihkan antara pempetisyen dan responden; (b) sama ada pempetisyen layak untuk menuntut ganti rugi sebanyak RM200,000 daripada responden bersama apabila perzinaan tersebut dibuktikan; (c) sama ada nafkah suami isteri boleh diperintahkan secara sekaligus; dan (d) sama ada pempetisyen telah memenuhi penilaian 'kemampuan dan keperluan' untuk mewajarkan tuntutannya untuk nafkah suami isteri. Isu utama kedua untuk penentuan mahkamah ialah sama ada pempetisyen berhak mendapat separuh daripada nilai semua aset perkahwinan. Dalam menentukan isu ini, mahkamah perlu mempertimbangkan persoalan-persoalan berikut: (i) sama ada aset yang diperoleh oleh responden semasa perkahwinan berpunca daripada harta pusaka yang diwariskan kepadanya dan dengan itu dikecualikan daripada kumpulan aset perkahwinan; (ii) sama ada perjanjian atau pengaturan perkahwinan wujud mengenai pembahagian aset-aset perkahwinan dan

bahagian yang akan diterima oleh pempetisyen — dalam hal ini, responden merujuk kepada dokumen yang didakwanya sebagai wasiatnya ('wasiat tersebut'), menegaskan bahawa ia menggariskan pengaturan kewangan yang telah dibuatnya untuk anak-anak dan pempetisyen; dan (iii) sama ada mahkamah harus menerima pakai pendekatan feminis terhadap pembahagian aset perkahwinan — berkenaan dengan perkara ini, pempetisyen bergantung pada perkara 8 Perlembagaan Persekutuan.

Diputuskan:

(1) Adalah tidak dinafikan bahawa dakwaan zina sememangnya suatu dakwaan yang serius. Akibatnya, walaupun standard pembuktian kekal pada imbangan kebarangkalian, tahap kebarangkalian yang lebih tinggi dalam standard tersebut telah digunakan disebabkan oleh beratnya dakwaan tersebut. Berkenaan dengan kredibiliti seseorang saksi, sudah menjadi undang-undang yang mantap bahawa tiada peraturan yang tegas boleh ditetapkan untuk menentukan sama ada seseorang saksi itu boleh dipercayai atau sebaliknya. Segala-galanya bergantung kepada kepercayaan atau ketidakpercayaan hakim terhadap cerita saksi tersebut. Setelah menjalankan pemerhatian dan penilaian ke atas pempetisyen, mahkamah mendapati dia seorang yang berterus-terang dan konsisten. Keterangan responden, sebaliknya, sangat meragukan dan tidak terdapat apa-apa sokongan yang boleh dipercayai untuk dakwaan dan tuntutannya. Pernyataannya penuh dengan ketidakkonsistenan, menjadikan kesnya tidak meyakinkan dan tidak masuk akal. Jika dilihat secara keseluruhan, keterangan responden tidak mempunyai kredibiliti, dan kelakuannya semasa pemeriksaan balas hanya menguatkan tanggapan bahawa dia tidak jujur (lihat perenggan 34, 71, 90–91 & 93).

(2) Apabila dipertimbangkan secara kolektif, keterangan-keterangan berikut, walaupun merupakan keterangan mengikut keadaan, membawa bukan sahaja kepada tahap kebarangkalian yang tinggi, tetapi kepada inferens yang tidak boleh disangkal tentang perzinaan antara responden dan responden bersama: (a) garis masa dan keadaan interaksi antara responden dan responden bersama; (b) kesempatan dan peluang yang tidak dipertikaikan responden dan responden bersama untuk terlibat dalam hubungan seksual; (c) perkongsian kediaman antara responden dan responden bersama; (d) responden yang bermalam di kediaman responden bersama; (e) perkongsian penginapan di Singapura; (f) percubaan untuk hamil melalui persenyawaan in-vitro (IVF); (g) kelakuan responden dalam mengutamakan responden bersama daripada pempetisyen; (h) pengakuan zina yang dibuat oleh responden kepada pempetisyen; dan (i) penilaian pempetisyen, responden dan responden bersama sebagai saksi-saksi di mahkamah (lihat perenggan 94).

(3) Kuasa mahkamah untuk memerintahkan responden bersama membayar ganti rugi kepada pempetisyen untuk zina terdapat dalam ss 58 dan 59 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('AMUU'). Tujuan ganti rugi yang akan diberikan kepada pempetisyen bukanlah untuk menghukum responden bersama tetapi adalah untuk membayar pampasan kepada pempetisyen. Apabila dipertimbangkan secara keseluruhan, keterangan-keterangan menunjukkan gambaran yang meyakinkan dan membimbangkan tentang kemudaratan yang serius yang diakibatkan, dan kerugian yang dialami oleh pempetisyen berpunca daripada hubungan zina antara responden dan responden bersama. Kemudaratan ini jauh menjangkaui pengkhianatan emosi, menggambarkan akibat langsung dan meluas terhadap pempetisyen dan anak-anaknya. Oleh itu, mahkamah mendapati bahawa ganti rugi berjumlah RM200,000 adalah adil dan munasabah. Selanjutnya, mengambil kira beban kewangan yang besar ditanggung oleh pempetisyen dalam mempertahankan hak undang-undangnya dan mencari keadilan, mahkamah memerintahkan responden bersama membayar kos guaman pempetisyen berjumlah RM50,000 (lihat perenggan 95–96 & 117–118).

(4) Dalam menentukan sama ada untuk menganugerahkan nafkah suami isteri kepada pempetisyen, mahkamah menggunakan budi bicaranya bukan sahaja dengan mempertimbangkan siapa yang bertanggungjawab ke atas kepecahbelahan perkahwinan tetapi juga dengan menggunakan ujian 'kemampuan dan keperluan' seperti yang dinyatakan dalam s 78 AMUU. Dalam kes ini, mahkamah berpendapat bahawa pempetisyen berhak menerima bayaran nafkah suami isteri secara sekali gus dan bukan secara bulanan, atas sebab-sebab berikut: (a) pada usia lanjut melebihi 72 tahun, adalah tidak praktikal dan tidak mampan bagi pempetisyen untuk bergantung pada bayaran bulanan dalam tempoh yang panjang; (b) pemisahan yang lengkap dan muktamad antara pihak-pihak adalah tindakan yang paling berfaedah; dan (c) tabiat ketidakpatuhan responden terhadap perintah mahkamah memberikan gambaran yang jelas bahawa pembayaran berterusan mungkin akan menimbulkan cabaran penguatkuasaan. Memandangkan keadaan-keadaan ini, bayaran sekali gus bukan sahaja penyelesaian yang lebih praktikal dan adil, tetapi juga penyelesaian yang sejajar dengan kepentingan keadilan (lihat perenggan 124–126 & 130–131).

(5) Walaupun mahkamah bersetuju bahawa bayaran sekali gus adalah wajar, mahkamah tidak bersetuju dengan cadangan jumlah bulanan sebanyak RM8,000. Setelah mengetepikan perbelanjaan yang tidak perlu dan melaraskan angka-angka tertentu, jumlah sebenar yang diperlukan untuk nafkah bulanan suami isteri pempetisyen ialah RM5,142, yang apabila dibundarkan, berjumlah kira-kira RM5,000. Walaupun perintah mahkamah interim yang dikeluarkan pada Mei 2023 menghendaki

bayaran bulanan sebanyak RM3,000 sebagai nafkah suami isteri, memandangkan responden bertanggungjawab ke atas kepecahbelahan perkahwinan, mahkamah mendapati wajar untuk meningkatkan nafkah bulanan suami isteri pempetisyen daripada RM3,000 kepada RM5,000 (lihat perenggan 133 & 138–139).

(6) Mahkamah mengasaskan pengiraannya pada purata antara umur semasa pempetisyen dan jangka hayat tipikal seorang wanita etnik Cina di Malaysia, iaitu kira-kira 80 tahun. Pada masa keputusan disampaikan, pempetisyen berumur 72 tahun tujuh bulan. Menggunakan pendekatan ini, mahkamah memutuskan bahawa nafkah suami isteri perlu dikira sehingga hari lahir pempetisyen ke-76, yang berjumlah 41 bulan. Kaedah ini memastikan bahawa bayaran sekali gus kekal munasabah, berkadar dan sejajar dengan pertimbangan praktikal berkenaan umur pempetisyen dan anggaran jangka hayatnya. Dengan mengguna pakai jumlah bulanan RM5,000 tersebut ke atas tempoh 41 bulan yang dikira, bayaran nafkah sekali gus yang perlu dibayar kepada pempetisyen berjumlah RM205,000 (lihat perenggan 141–143).

(7) Dalam kes semasa, tidak dapat dinafikan bahawa responden sememangnya mewarisi jumlah RM440,000 daripada bapanya, tetapi aset-aset ini telah bercampur dengan perolehan yang dibuat semasa perkahwinan dan digunakan untuk kepentingan responden, pempetisyen dan anak-anak. Akibatnya, warisan harta pusaka yang asal tidak lagi dapat dikenal pasti atau dikesan dengan jelas kepada bentuk asalnya. Memandangkan percampuran ini dan sifat integrasi aset-aset tersebut ke dalam aset-aset perkahwinan, mahkamah berpandangan bahawa aset-aset tersebut harus dianggap sebagai sebahagian daripada aset-aset perkahwinan yang dikongsi dan bukannya hanya diperoleh daripada harta pusaka yang diterima oleh responden (lihat perenggan 153).

(8) Mahkamah tidak boleh menerima kebergantungan responden terhadap wasiat tersebut sebagai perjanjian perkahwinan atas sebab-sebab berikut: (a) 'wasiat' yang dirujuk oleh responden kelihatan sangat meragukan — dalam hal ini, ikatan-ikatan dokumen yang difailkan oleh responden mengandungi dua versi 'wasiat', menimbulkan kebimbangan tentang keabsahan dan kebolehpercayaannya; dan (b) wasiat tidak boleh dianggap sebagai perjanjian kerana ia merupakan dokumen unilateral yang dibuat semata-mata oleh pewasiat. Oleh itu, 'wasiat' yang dikatakan ini, yang disandarkan oleh responden, tidak boleh diambil kira dalam menentukan bahagian pempetisyen dalam aset-aset perkahwinan (lihat perenggan 158–161).

(9) Tidak seperti doktrin undang-undang yang ditetapkan yang berasaskan statut dan duluan, pendekatan feminis berisiko memihak kepada satu jantina berbanding yang lain dan ini akan melemahkan prinsip teras

keadilan untuk semua. Mahkamah hendaklah menggunakan prinsip undang-undang yang adil dan konsisten, dan tidak mengikut mana-mana ideologi sosial atau politik yang subjektif. Peranan mahkamah adalah untuk memastikan bahawa setiap keputusan adalah berdasarkan penilaian yang komprehensif dan objektif terhadap fakta dan keadaan setiap kes, dan bukannya bergantung pada tanggapan atau generalisasi awal tentang peranan jantina. Pendekatan 'one-size-fits-all' adalah tidak mencukupi, kerana pendekatan sedemikian akan gagal untuk mengakui kerumitan dan nuansa yang membentuk setiap kes. Penilaian individu yang menyeluruh akan membantu mencegah ketidakadilan dan akan memastikan bahawa keputusan undang-undang menggambarkan dengan tepat realiti setiap kes. Oleh itu, adalah penting untuk menggunakan pendekatan yang adil dan bukannya pendekatan feminis terhadap pengagihan aset perkahwinan (lihat perenggan 166 & 168–169).

(10) Tugasan untuk membahagikan aset-aset perkahwinan telah ditetapkan di bawah s 76 AMUU. Seksyen 76 AMUU telah dipinda melalui Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) (Pindaan) 2017 (Akta A1546) dengan tujuan untuk mengakui dan memberi pengiktirafan undang-undang kepada sumbangan bukan kewangan oleh isteri semasa tempoh perkahwinan yang sering diabaikan. Dalam kes ini, berdasarkan keterangan yang dikemukakan, mahkamah berpendapat bahawa aset-aset perkahwinan tersebut harus dibahagikan sama rata antara pempetisyen dan responden atas sebab-sebab berikut: (a) sumbangan langsung dan tidak langsung pempetisyen; (b) sumbangan pempetisyen kepada kebajikan keluarga; (c) pengorbanan pempetisyen untuk usaha perniagaan responden; (d) tempoh perkahwinan tersebut yang panjang; dan (e) keadilan dan kesaksamaan dalam pembahagian aset — keadilan menghendaki bahawa kedua-dua pihak harus diberi pampasan yang secukupnya untuk sumbangan mereka, tidak kira sama ada sumbangan tersebut berbentuk kewangan atau bukan kewangan (lihat perenggan 145–147, 170–172 & 175–177).]

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V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie [1999] 5 CLJ 474, HC (refd)
Yew Yin Lai v Teo Meng Hai & Anor [2013] 8 MLJ 787; [2007] CLJU 127; [2007] 1 LNS 127, HC (folld)

Legislation referred to

Evidence Act 1950 ss 103, 114, 114(g)
Federal Constitution art 8
Law Reform (Marriage and Divorce) Act 1976 ss 53, 54(1)(a), 58, 58(3),

59, 76, 77, 77(1), 78, 80

Goh Sui Lin (with Denise Lim Hsui Yen) (Kee Sern, Siu & Huey) for the petitioner. Thayalan Moorthy (Dharan & Thaya) for the respondents.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was a petition sought by the petitioner-wife, seeking a judicial separation from the respondent-husband, as well as spousal maintenance, division of matrimonial assets, and damages from the co-respondent for the alleged adultery between the co-respondent and the respondent-husband.

[2] Given the privacy of parties and sensitivity of issues in these proceedings, the petitioner, respondent and co-respondent have been anonymised in these grounds of judgment respectively as HAI, PAI and KAI.

THE FACTUAL BACKGROUND

[3] The petitioner and respondent (collectively 'the parties') were aged 72 and 74, respectively, at the time of the commencement of the trial of the petition for judicial separation. They entered into matrimony in October 1977, marking the beginning of a union that would last almost five decades. Their marriage was blessed with six children ('the children'), whose ages ranged from 36 to 46 at the time of the trial of the petition for judicial separation, as well as three grandchildren.

[4] The petitioner, despite earning a Diploma in Business Studies from Singapore's Ngee Ann College, chose to forgo her professional ambitions to become a full-time housewife, devoting herself almost entirely to raising the children and managing the household.

[5] The respondent, on the other hand, was a civil engineer with an academic background from the University of Malaya. Over the years, he achieved professional success, founding several businesses that underscored his entrepreneurial acumen. Between 1991 and 1998, he worked overseas in Brunei, further advancing his career. During this period, the petitioner remained in Malaysia, shouldering the sole responsibility of caring for the children and managing the household affairs.

[6] The marriage, which endured almost five decades, was marked by a long period of relative harmony and stability. However, this equilibrium was disrupted in September 2022, when the petitioner claimed that the respondent

confessed to an adulterous relationship with the co-respondent, who was 48 years old at the time of the trial of the petition for judicial separation. This revelation proved to be a pivotal moment in their relationship, ultimately leading the petitioner to seek judicial separation.

[7] On 14 October 2022, the petitioner filed a petition for judicial separation ('the judicial separation petition'), where she had sought multiple remedies to address the emotional and financial implications of the irretrievable breakdown of the marriage.

[8] Specifically, the petitioner claimed spousal maintenance; and division of matrimonial assets, requesting half the value of all properties, savings, and other shared assets accrued during their marriage.

[9] The petitioner also pursued damages from the co-respondent, holding her accountable for her alleged role in the irretrievable breakdown of the marriage.

THE ISSUES

[10] The issues that had to be addressed by this court were as follows:

(a) *spousal maintenance* — in considering whether a lump-sum spousal maintenance of MYR1.92m should be awarded to the petitioner by the respondent, the court examined several factors related to the breakdown of the marriage. These included:

  (i) whether the petitioner had proved adultery between the respondent and co-respondent, and that such adultery had caused the irretrievable breakdown of the marriage between the petitioner and respondent;

  (ii) whether the petitioner was entitled to claim damages in the amount of MYR200,000 from the co-respondent upon establishing the adultery;

  (iii) whether spousal maintenance may be ordered in lump-sum; and

  (iv) whether the petitioner had satisfied the 'means and needs' assessment to justify her claim for spousal maintenance.

(b) *the matrimonial assets* — with regard to the matrimonial assets, the primary issue was whether the petitioner was entitled to half the value of all the matrimonial assets. In addressing the division of matrimonial assets, the court had to consider the following further points, namely:

  (i) whether the assets acquired by the respondent during the marriage

A stemmed from his inheritance and thus excluded from the marital pool of assets;

(ii) whether a marital agreement or arrangement existed regarding the division of matrimonial assets and the portion the petitioner would receive; and

B

(iii) whether the court should adopt a feminist approach to the division of matrimonial assets.

C **[11]** The judicial separation petition was allowed to the extent of the judicial separation itself, spousal maintenance in a lump-sum of MYR205,000, half the value of all the assets owned by the respondent, and damages in the amount of MYR200,000 from the co-respondent. Both the respondent and the co-respondent were also ordered to pay costs of MYR50,000 each to the petitioner.

D

[12] The following are my reasons.

CONTENTIONS, EVALUATION, AND FINDINGS

E

Spousal maintenance

[13] In determining the issue of spousal maintenance, the starting point was s 77(1) of the Law Reform (Marriage and Divorce) Act 1976 ('Law Reform (Marriage and Divorce) Act'), which reads:

F

> Section 77 — Power of court to order maintenance of spouse
>
> (1) The court may order *a man to pay maintenance to his wife or former wife*:
>
> (a) during the course of any matrimonial proceedings;
>
> G
>
> (b) when granting or *subsequent to the grant of a* decree of divorce or *judicial separation*;
>
> (c) if, after a decree declaring her presumed to be dead, she is found to be alive. (Emphasis added.)

H

[14] The respondent did not deny his obligation to provide spousal maintenance for the petitioner, but the contention lay in determining the appropriate quantum. The respondent contended that the petitioner's needs could be sufficiently addressed with a monthly payment of MYR3,000, as specified in the interim court order issued in May 2023 ('the May 2023 interim court order').

I

[15] In determining whether the petitioner was entitled to spousal maintenance, the court was required to examine, amongst others, the degree of responsibility of each party for the breakdown of the marriage, as prescribed by s 78 of the Law Reform (Marriage and Divorce) Act, which reads:

> Section 78 — Assessment of maintenance
>
> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, *but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage*. (Emphasis added.)

[16] Accordingly, it was imperative to identify the factors that led to the irretrievable breakdown of the marriage between the petitioner and respondent.

Whether petitioner had proved adultery between respondent and co-respondent

[17] Although the respondent had not exactly contested the judicial separation sought by the petitioner, the issue in the forefront was whether the marriage had irretrievably broken down due to an adulterous relationship between the respondent and co-respondent, pursuant to ss 53 and 54(1)(a) of the Law Reform (Marriage and Divorce) Act, both of which read:

> Section 53 — Breakdown of marriage to be sole ground of divorce
>
> (1) Either party to a marriage may petition for a divorce on the ground that the *marriage has irretrievably broken down*.
>
> (2) The court hearing such petition shall, so far as it reasonably can, inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances make it just and reasonable to do so, make a decree for its dissolution.
>
> ...
>
> Section 54 — Proof of breakdown
>
> (1) In its inquiry into the facts and circumstances alleged as causing or leading to the breakdown of the marriage, the court shall have regard to one or more of the following facts, that is to say —
>
> (a) that the *respondent has committed adultery and the petitioner finds it intolerable* to live with the respondent;
>
> ... (Emphasis added.)

[18] The petitioner had also claimed damages from the co-respondent pursuant to s 58(3) of the Law Reform (Marriage and Divorce) Act, which reads:

Section 58 — Damages for adultery may be claimed against co-respondent

...

(3) Where damages have been claimed against a co-respondent —

(a) if, after the close of the evidence for the petitioner, the court is of the opinion that there is not sufficient evidence against the co-respondent to justify requiring him or her to reply, the co-respondent shall be discharged from the proceedings; or

(b) if, at the conclusion of the hearing, the court is satisfied that adultery between the respondent and co-respondent has been proved, *the court may award the petitioner such damages as it may think fit, but so that the award shall not include any exemplary or punitive element*. (Emphasis added.)

[19] At this juncture, I am compelled to state that although many countries have moved towards no-fault divorce systems, where the dissolution of marriage is based on the irretrievable breakdown of the relationship rather than the conduct of one party, in the Malaysian legal framework, adultery is retained as a recognised fault ground for divorce. The Law Reform (Marriage and Divorce) Act specifically enshrines adultery as a legal basis for claiming the irretrievable breakdown of a marriage, meaning that the court must consider it when it is alleged.

[20] In jurisdictions that have abolished the fault principle, the focus has shifted to reducing the emotional and financial strain of divorce proceedings by avoiding the need to establish blame. These reforms often encourage a more amicable and less adversarial approach, acknowledging that a marriage may end for numerous reasons that do not necessarily involve misconduct. However, here, the Law Reform (Marriage and Divorce) Act mandates that if adultery was alleged and proved, it must be considered in determining the breakdown of the marriage, and potentially in the award of spousal maintenance.

[21] Despite the global shift towards no-fault divorce, our legal framework still mandates a thorough investigation into allegations of adultery. This requirement raises an important question: why must individuals expose their most personal and painful details, effectively airing their dirty laundry in public, when doing so only intensifies the existing bitterness and animosity between the parties? I find this approach deeply problematic, as it not only exacerbates emotional distress, but also unnecessarily complicates an already challenging process of dissolving a marriage.

[22] In my view, the focus on adultery as a prerequisite for establishing marital breakdown is both outdated and counterproductive. It forces couples into an adversarial position, where the need to prove or disprove infidelity

overshadows the more constructive goal of achieving a fair and respectful separation. This adversarial process can prolong the proceedings and inflict additional emotional harm on all involved parties.

[23] Nonetheless, until the Law Reform (Marriage and Divorce) Act is amended to remove adultery as a ground for irretrievable breakdown of a marriage, I am, by law, compelled to address such allegation in the present case.

[24] The first issue, therefore, that the court needed to address was the definition and scope of adultery. In *Clarkson v Clarkson* (1930) 143 LT 775; (1930) 46 TLR 623, adultery was explicitly defined as voluntary sexual intercourse between a man and a woman who are not married to each other, where at least one party is married to someone else.

[25] Further guidance on this matter may be drawn from Indian case law, including *Gitabai v Fattoo* AIR [1966] Madhya Pradesh 130 and *Mrs Dawn Henderson v D Henderson* (1969) 2 MLJ 196; AIR [1970] Madras 104. These cases reiterate that adultery entails consensual sexual intercourse between a married individual and a person of the opposite sex who is not their spouse, occurring during the subsistence of the marriage. These authoritative interpretations collectively underscored the necessity for clear and cogent evidence of sexual intercourse to substantiate claims of adultery between the respondent and co-respondent.

[26] Hence, the evidence must go beyond merely establishing suspicion or the opportunity to commit adultery; it must be compelling enough to convince the court that, given the circumstances, adultery must have occurred. In cases where the evidence is entirely circumstantial, the court will not infer guilt unless the facts presented are incapable of any other alternative and reasonable explanation.

[27] There was no question that the petitioner bore the legal burden of proving adultery under s 103 of the Evidence Act 1950 ('the Evidence Act'), as she was the one asserting the existence of a specific fact that she sought to establish before the court. However, the initial issue requiring determination was the appropriate standard of proof necessary to substantiate allegations of adultery.

[28] Counsel for both the respondent and co-respondent suggested that the petitioner should be held to the standard of proof beyond a reasonable doubt, arguing that, under this stricter threshold, the petitioner had failed to establish her allegation of adultery between the respondent and the co-respondent.

[29] I was unable to agree with respondent's counsel as I took the position that the appropriate standard of proof in this case was on a balance of probabilities, for several reasons.

[30] The standard of proof beyond a reasonable doubt is reserved exclusively for criminal offences. For non-Muslims in Malaysia, marital infidelity or adultery is not classified as a criminal act. At most, adultery constitutes a matrimonial offence, which does not carry criminal implications.

[31] Even in cases where adultery was considered a matrimonial offence, it was important to recognise the significant changes in matrimonial law following the introduction of the Law Reform (Marriage and Divorce) Act, which came into force on 1 March 1982. Prior to that date, adultery was treated as a matrimonial offence, and divorce petitions often required proof beyond a reasonable doubt. However, the Law Reform (Marriage and Divorce) Act redefined the basis for divorce, emphasising the irretrievable breakdown of marriage rather than outdated notions of matrimonial offences as grounds for dissolution.

[32] Furthermore, it must be emphasised that these proceedings were in the Family Court which is a civil court. As with other serious civil allegations, such as fraud or forgery, the standard of proof should be consistent, namely, on a balance of probabilities. This principle is supported by the case of *GGC v CCC & Anor* [2016] MLJU 377; [2016] 1 LNS 885, which referenced the Federal Court decision in *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1; [2015] 7 CLJ 584. In *GGC v CCC*, Lee Swee Seng J (as he then was) had clarified in the following passages:

> [99] Based on the cogent arguments of the Federal Court in *Sinnaiyah & Sons Sdn Bhd v Damai Setia Sdn Bhd* [2015] 5 MLJ 1; [2015] 7 CLJ 584, which has held that fraud in civil cases should be proved on the standard of proof of the balance of probabilities, *the time has come for standardisation of proof even in cases of adultery in a divorce petition which is essentially fraud on a spouse in a civil proceeding: it should be henceforth on a balance of probabilities as well*. The anomaly has to be realigned. To perpetuate the dichotomy would be to create an artificial distinction devoid of merits. The Federal Court could not have made it clearer when in declaring the standard of proof on a balance of probabilities in civil fraud as follows:
>
> > [49] With respect, we are inclined to agree with learned counsel for the plaintiff that the correct principle to apply is as explained in *In re B (Children). It is this: that at law there are only two standards of proof, namely, beyond reasonable doubt for criminal cases while it is on the balance of probabilities for civil cases*. As such even if fraud is the subject in a civil claim the standard of proof is on the balance of probabilities. The re is no third standard. And (N)either the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. (Emphasis added.)

[33] That said, it was important to recognise that the standard of proof on a balance of probabilities encompasses a spectrum. It can range from merely tipping the scales — being more probable than not (or approximately 51 percent, as noted in *Unsung bin Rasad v Public Prosecutor* [2019] 4 MLJ 448; [2019] 1 LNS 662), to a higher degree of probability, though still short of the criminal standard of beyond a reasonable doubt.

[34] The allegation of adultery is undeniably serious in nature. As a result, while the standard of proof remained on a balance of probabilities, a higher degree of probability within that standard was applied due to the gravity of the allegation.

[35] On this point, I found guidance in the case of *Bater v Bater* [1950] 2 All ER 458, where Lord Denning, in the following passage, had articulated the nuanced relationship between the seriousness of allegations in civil cases and the varying degrees within the balance of probabilities standard:

> ... So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, *will naturally require a high degree of probability than that which it would require if considering whether negligence was established*. (Emphasis added.)

[36] A relevant case in this context is the Court of Appeal decision in *Teoh Meng Kee v Public Prosecutor* [2014] 5 MLJ 741; [2014] 7 CLJ 1034, which applied the civil standard of proof while referencing the *Briginshaw* sliding scale in *Briginshaw v Briginshaw* (1938) 60 CLR 336. In *Teoh Meng Kee v Public Prosecutor,* it was held that while the standard of proof remains the civil balance of probabilities, the degree of persuasion required to convince the court varies based on the seriousness or gravity of the allegation. As a result, although the standard of balance of probabilities is maintained, the sliding scale would adjust the weight and assessment of the evidence required.

[37] Additionally, I drew guidance from the Federal Court case *Public Prosecutor v Kuala Dimensi Sdn Bhd & Ors* [2021] 2 MLJ 469, where Lord Nicholls of Birkenhead's explanation in *Re H (Minors)* [1996] 1 All ER 1 was cited. Lord Nicholls explained that the standard of proof on a balance of probabilities is a flexible test, and that the court must be satisfied with the degree of evidence required, taking into account the nature and gravity of the issue at hand:

> [40] Lord Nicholls of Birkenhead in *Re H (Minors)* [1996] 1 All ER 1 explained that the *standard of proving on a balance of probabilities was a flexible test* and that the court must be satisfied:
>
> > ... on the evidence, the occurrence of the event was more likely than not. When

A assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, *that the more serious the allegation* the less likely it is that the event occurred and, hence, *the stronger should be the evidence before the court* concludes that the allegation is established on the balance of probability. (Emphasis added.)

B

[38] The evidence adduced by the petitioner against the co-respondent was primarily circumstantial. The respondent argued that this evidence was insufficient to meet the required standard of proof for establishing adultery. However, after thorough deliberation, I found myself in agreement with the C petitioner for the following reasons.

[39] Firstly, it was acknowledged that, given the inherent nature of adultery, direct evidence is often scarce. Consequently, allegations of adultery may justifiably be substantiated through circumstantial evidence. I found D instructive the case of *Yew Yin Lai v Teo Meng Hai & Anor* [2013] 8 MLJ 787; [2007] CLJU 127; [2007] 1 LNS 127, *Ang Ching Seong v Chong May Woi & Anor* [2014] 1 CLJ 254, and *Chua Kok Tee David v DBS Bank Ltd* [2015] 5 SLR 231. In *Chua Kok Tee Davis v DBS Bank Ltd*, it was stated by Vinodh Coomaraswamy J in the following passage:

E

> Circumstantial evidence is not inevitably inferior to direct evidence. It can be every bit as probative as direct evidence *if the circumstances or the inferential chain are obvious and compelling*. (Emphasis added.)

F **[40]** Both the respondent and co-respondent had acknowledged the existence of their relationship but denied that it had become sexual. I found their denial to be unconvincing for the following reasons.

[41] It was undisputed that around 2021, the respondent had relocated to G Kampar to establish a farm, where he subsequently met the co-respondent at a durian workshop. Notably, the petitioner highlighted that early 2021 marked the last time the petitioner and respondent engaged in sexual relations, suggesting a change in the marital dynamic coinciding with the respondent's interactions with the co-respondent.

H

[42] The petitioner had adduced evidence pointing to multiple occasions and opportunities for the respondent and co-respondent to have engaged in adultery. These instances were not disputed, as both the respondent and co-respondent admitted to being in the same locations at the same times. I However, they denied that any adultery occurred.

[43] The respondent had even acknowledged that the co-respondent had stayed overnight at his house in Kampar, and that she had later moved into a larger residence with the respondent.

[44] The co-respondent similarly admitted that the respondent had stayed overnight at her condominium. Whilst the respondent claimed that such stays were related to meditation sessions, as the co-respondent was supposedly his meditation teacher, no evidence was provided to substantiate this explanation.

[45] There was also no convincing explanation provided for the multiple instances in which the respondent and co-respondent were seen living together at various locations. This recurring behaviour contradicted their claims of a purely platonic relationship and had cast doubt on the truthfulness of their statements. Taken together, these factors strongly suggested that the co-respondent's version of events was not genuine, and that her testimony appeared to be deliberately crafted to mislead and obscure the true nature of her relationship with the respondent.

[46] Both the respondent and co-respondent had also admitted to staying in the same room at a hotel in Singapore between 27 and 29 June 2022. While the co-respondent claimed that they slept in separate beds, no evidence was provided to corroborate this assertion.

[47] The co-respondent's claim that cost-saving was a motivating factor for getting just one room when they travelled abroad was particularly absurd given the respondent's significant financial means, reportedly amounting to millions of ringgit. It defied logic that someone of such wealth would feel compelled to economise by booking just one room.

[48] I had also observed a series of emails exchanged between the respondent and the co-respondent, as well as between the respondent and personnel from a clinic specialising in in-vitro fertilisation ('the IVF Clinic'). These communications focused on inquiries about oocyte freezing (egg preservation), a procedure commonly associated with family planning or fertility preservation. The content of these emails raised important questions about the true nature of the relationship between the respondent and the co-respondent.

[49] Extracts of the relevant emails are as follows (the reference to the respondent being anonymised as 'PAI'):

> Co-Respondent — 22 May 2022: Dear PAI, Apart from the initial cost of 18k nett, there would be:
>
> (i) Yearly charges to preserve.
>
> Year 1: include in package.
>
> Year 2: RM2200.
>
> Year 3 onwards: RM1200
>
> (ii) There could also be a OvaPRP which is using the Plasma Rich Platlet way to

rejuvenate the ovaries if needed before extraction, if needed so, that cost additional 10+k

(iii) *Recommended to do a fertility test* before procedure RM600. It is done by my own gynae, Dr Haris Hamzah who apparently is the first gynae in Malaysia doing IVF, thus best doctor I supposed who know my history too.

On sperm freezing, it is not really need so, unless the sperm is of low quality due to health issues. Recommend to do a sperm analysis at their clinic.

(i) *Fertility test RM600*

(ii) Sperm freezing

Year 1: RM1000

Year 2 onwards: RM600.

The consultant Ashley is asking if we are free to do the fertility test first before deciding what to do. She is suggesting coming Monday.

...

IVF Clinic — 27 May 2022: Are you coming with partner? Or come alone for check-up prior to program?

Co-Respondent — 30 May 2022: *Coming with partner* ... both

Co-Respondent — 30 May 2022: *Is there also any abstaining*, food, *sexual*, min 6 hours sleep before the fertility test day?

IVF Clinic — 30 May 2022: Yes. Please find the info as per below:

For Sperm test — *husband need to have abstinence of 3 to 5 days*. Meaning he needs to ejaculate at least once within 6 to 4 days bef the appointment date.

For Example: Appointment on Friday, *husband must ejaculate/release sperm* on any of these days; Sunday OR Monday OR latest by Tuesday, at least once, or more (no limit).

The reason is to get the most accurate result, it's best to test semen sample that is kept for 3 days, not lesser or longer. (Emphasis added.)

[50] The emails exchanged between the co-respondent and the respondent, as well as those between the co-respondent and the personnel from the IVF Clinic regarding details, including pricing, strongly indicated that the co-respondent and the respondent were planning to have a child together. The discussions about oocyte freezing and fertility tests for both co-respondent and respondent were unmistakably indicative of shared intentions to explore reproductive options — a decision that is typically made between individuals in a close and intimate relationship.

[51] In these emails, the co-respondent explicitly referred to the respondent as her 'partner,' suggesting a relationship of personal and intimate significance

rather than the purely platonic connection they had claimed. Additionally, she did not dispute the reference to the respondent as her 'husband' by the personnel from the IVF Clinic.

[52] Furthermore, the co-respondent's queries included specific references to fertility tests for both herself and the respondent, underscoring a collaborative interest in reproductive health. This correspondence strongly suggested that their relationship extended beyond mere friendship, as such discussions are typically associated with couples planning their future together, particularly in matters related to parenthood or shared medical decisions.

[53] During cross-examination, the co-respondent attempted to explain away the reference to 'partner' in the emails by claiming it referred to a 'business partner'. However, this explanation was not only implausible but also an affront to common sense. It defied logic to suggest that business partners would collaborate on something as profoundly personal and emotionally significant as having a child together through IVF. The process of fertility treatment inherently involves a degree of intimacy and joint decision-making that extends well beyond the boundaries of a professional or business relationship.

[54] The co-respondent, during cross-examination, asserted that the respondent was 'not her type' and claimed to have an Italian boyfriend, questioning why she would be involved with the respondent. However, in my view, this reference to an Italian boyfriend was both irrelevant and unconvincing. It was noteworthy that the co-respondent introduced this claim unexpectedly, despite it not being mentioned in her statement or pleadings. The sudden introduction of this unverified assertion appeared to be a defensive manoeuvre rather than a credible fact, weakening the reliability of her testimony and casting significant doubt on the accuracy and truthfulness of her account.

[55] If the co-respondent was indeed in a committed relationship with this alleged Italian boyfriend, it would be reasonable to expect that she would engage in fertility-related discussions and planning with him rather than the respondent. The fact that she instead engaged in such discussions with the respondent raised further questions about the nature of their relationship. Moreover, the co-respondent failed to provide any corroborating evidence to substantiate the existence of this boyfriend — such as presenting him as a witness or offering any form of documentation to support her claim. This lack of supporting evidence significantly undermined her credibility.

[56] I had to also take note of the content of the emails between the co-respondent and respondent regarding the fertility treatments, which were as follows:

A Co-Respondent — 23 May 2022: On sperm freezing, it is not really need so, *unless the sperm is of low quality* due to health issues. Recommend to do a sperm analysis at their clinic.

Respondent — 23 May 2022: Danielle, Do fertility test first please. *We consider the next step* after that.

B Respondent — 31 May 2022: I thought we agreed that *you will build your immunity first (due to covid attack), then proceed with fertility test*. From the results we decide on the next step. (Emphasis added.)

C **[57]** The co-respondent contended before this court that her motivation for undergoing fertility tests alongside the respondent stemmed from a desire to take advantage of a discount allegedly offered by the IVF Clinic. However, she had failed to provide any supporting evidence of such a discount being available or offered. This lack of corroboration undermined the credibility of her claim. Consequently, I found it difficult to accept her explanation at face D value and concluded that the co-respondent's justification was not only unconvincing, but also appeared to be an attempt to mislead the court. The inference, therefore, was that her actions and testimony were intended to obscure the true nature of her relationship with the respondent, specifically to conceal the adulterous nature of their association. E

[58] The respondent and co-respondent's plans and intentions to have a child together through the use of IVF provided compelling grounds for the court to infer the nature and extent of their relationship. This decision to F pursue assisted reproductive technology suggested a deliberate and shared effort to achieve parenthood, indicating a level of commitment and intimacy consistent with a personal and sexual connection.

[59] Moreover, the decision to explore IVF as a solution implied that there G was a high probability that the respondent and co-respondent had attempted to conceive a child through conventional means but were unsuccessful. This logical progression, from attempting natural conception to considering IVF, further fortified my view that their relationship was not merely platonic or professional but adulterous in nature.

H

[60] The emails, paired with the co-respondent's unconvincing explanations, not only debunked her narrative of a business relationship but also exposed inconsistencies in her testimony, and doubts on her credibility. These factors collectively pointed to a relationship between the respondent and I co-respondent that was far more personal and sexual than either one of them had admitted.

[61] The respondent's actions demonstrated an extraordinary and highly unusual level of trust in the co-respondent, one that surpassed even the trust he

placed in the petitioner, his lawful spouse. This was particularly evident in his decision to grant the co-respondent access to view a portion of the matrimonial assets — namely, the gold and silver holdings securely stored at a security company, Certis Cisco, in Singapore. Such access was not a trivial matter, as it involved highly valuable assets that were part of the respondent's financial security.

[62] What made this act even more striking was that, throughout the entirety of their marriage, the petitioner had never been afforded the same privilege. Despite being his legal wife, she was excluded from such financial disclosures, while the co-respondent, an individual with whom the respondent claimed to have only a platonic association, was given this exclusive access. This stark disparity raised compelling questions about the true nature of their relationship.

[63] The exclusivity of this gesture strongly suggested that the co-respondent occupied a uniquely important position in the respondent's life — one that went beyond casual friendship or professional association. It implied a deep level of confidence, familiarity, and high probability of an intimate bond between them. Given the sensitivity and significance of the matrimonial assets in question, the respondent's decision to involve the co-respondent, rather than his spouse, reinforced the inference that their relationship was far more personal than he had claimed.

[64] The petitioner asserted that the final blow came on 1 September 2022, when the respondent made a pivotal declaration. He disclosed that he had found someone with whom he intended to spend the rest of his life and who would care for him in his old age. Seeking the petitioner's consent to pursue this relationship, his admission left her overcome with anger and shock. In response, she immediately demanded a divorce, to which the respondent, without protest, agreed.

[65] In insisting that their connection was purely platonic, the evidence of both the respondent and co-respondent rested primarily on their oral testimony in court, without any supporting evidence. As a result, the credibility of their claims largely depended on the assessment of their oral statements and demeanour during the trial of the judicial separation petition.

[66] It is trite law that, apart from applying the standard of proof required by law, a trier of fact, in order to arrive at a decision according to law, must judicially appreciate the evidence led before him upon the issue called for resolution.

[67] In this connection, I am guided by the words of Gopal Sri Ram JCA (as

A he then was) in *Boonsom Boonyanit v Adorna Properties Sdn Bhd* [1997] 2 MLJ 62; [1995] 4 CLJ 45, in the following passage:

> A decision arrived in the absence of a judicial appreciation of evidence is liable to appellate correction. Judicial appreciation is concerned with the process of evaluating the evidence for the purpose of discovering where the truth lies in a particular case. It includes, but is not limited to, identifying the nature and quality of the evidence, *assigning such weight to it as the trier of fact deems appropriate, testing the credibility of oral evidence against contemporaneous documents as well as the probabilities of the case and assessing the demeanour of witnesses*. (Emphasis added.)

[68] At this stage, it was important to highlight that the assessment of witnesses' oral testimony is particularly crucial in family law cases. This is because such cases often lack contemporaneous documentary evidence to either substantiate or dispute the claims made. Unlike commercial disputes or other legal areas where financial records, contracts, or written communications provide objective proof, family law matters typically revolve around personal experiences, interactions, and other subjective elements. The absence of solid evidence in these cases means that greater reliance must be placed on oral testimony, making the demeanour of witnesses relatively significant in the court's decision-making process.

[69] In my evaluation of the oral evidence of the petitioner, respondent and co-respondent, I was guided by the words of Gillen J in *Sean Thornton (a minor by his mother and next friend) v Northern Ireland Housing Executive* [2010] NIQB 4, which was adopted in *McAllister v Campbell* [2014] NIQB 24, in the following passages:

> [12] Credibility of a witness embraces not only the concept of his truthfulness ie whether the evidence of the witness is to be believed but also the objective reliability of the witness ie his ability to observe or remember facts and events about which the witness is giving evidence.
>
> [13] In assessing credibility the court must pay attention to a number of factors which, inter alia, include the following:
>
> – the inherent probability or improbability of representations of fact;
>
> – the presence of independent evidence tending to corroborate or undermine any given statement of fact;
>
> – the presence of contemporaneous records;
>
> – the demeanour of witnesses eg does he equivocate in cross examination;
>
> – the frailty of the population at large in accurately recollecting and describing events in the distant past;
>
> – does the witness take refuge in wild speculation or uncorroborated allegations of fabrication;
>
> – does the witness have a motive for misleading the court; and

– weigh up one witness against another.

[70] The test as to credibility of a witness is: 'how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case'. This was established by the Federal Court in *Md Zainudin bin Raujan v Public Prosecutor* [2013] 3 MLJ 773; [2013] 4 CLJ 21, in the words of Hasan Lah FCJ in the following passages:

> It is trite that *the inherent probability or improbability of a fact in issue must be the prime consideration* in deciding whether a witness is credible or not. It is the duty of the court to sieve the evidence and to ascertain what are the parts of the evidence tending to incriminate the accused which he accepted. In *Public Prosecutor v Dato' Seri Anwar bin Ibrahim (No 3)* [1999] 2 MLJ 1 at p 79; [1999] 2 CLJ 215, Augustine Paul J (as he then was) summed up the tests for determining the credibility of a witness as follows:
>
> > The Privy Council has stated that the real tests for either accepting or rejecting the evidence of *a witness are how consistent the story is with itself, how it stands the test of cross-examination, and how far it fits in with the rest of the evidence and the circumstances of the case* (see *Bhojraj v Sitaram* [1936] AIR PC 60) ... It must, however, be observed that being unshaken in cross-examination is not per se an all-sufficient acid test of credibility. The inherent probability or improbability of a fact in issue must be the prime consideration (see *Muniandy & Ors v Public Prosecutor* [1966] 1 MLJ 257; [2016] CLJU 592; [2016] 1 LNS 592) ... (Emphasis added.)

[71] In the final analysis, it is trite that no hard and fast rule can be laid down for determining the credibility or otherwise of a witness. Everything depends on the judge's belief or disbelief in the witness' story: per Sir George Farwell, in the Privy Council case of *Bombay Cotton Manufacturing Co Ltd v Raja Bahadur Shivlal Motilal* ILR 1915 39 Bom 386 (PC).

[72] The respondent, in refuting the petitioner's allegation of adultery, claimed that he could not have engaged in sexual intercourse with the co-respondent due to his alleged erectile dysfunction (ED) condition. As such, he also denied ever confessing to the petitioner about having an adulterous relationship with the co-respondent.

[73] In my view, the respondent's contention was entirely untenable and unsubstantiated for several reasons.

[74] Throughout the trial of this judicial separation petition, the respondent repeatedly relied on his alleged condition of ED as a central argument in his defence. He claimed that his ED had caused a complete cessation of sexual relations with the petitioner, which he asserted as evidence that he could not

possibly have engaged in an adulterous affair with the co-respondent. This contention was presented as the cornerstone of his argument to refute the petitioner's allegation of adultery.

[75] In my view, the respondent's assertions appeared to be a strategic attempt to use his alleged medical condition to justify the absence of physical intimacy in his marriage while also pre-emptively discrediting any claims of extramarital affairs. However, despite repeatedly asserting his inability during the trial, his arguments were entirely unsubstantiated. Crucially, he failed to provide any supporting evidence — such as medical reports, expert testimony, or any corroborating documentation — to validate his claim of ED or the severity of it, if at all. Instead, his claim relied solely on his own oral testimony, rendering it unverified and significantly weakening its credibility. Bearing in mind that the respondent had the burden of proving his ED by virtue of s 103 of the Evidence Act, the complete absence of objective evidence raised serious doubts about the reliability of his assertion and its relevance to the case.

[76] Accordingly, the petitioner, relying on illustration (g) to s 114 of the Evidence Act, urged the court to draw an adverse inference against the respondent due to his failure to present medical evidence to substantiate the alleged ED. Illustration (g) to s 114 of the Evidence Act reads:

> Section 114 — Court may presume existence of certain fact
>
> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The court may presume:
>
> ...
>
> (g) that evidence which could be and is not produced would if produced be *unfavourable to the person* who withholds it; (Emphasis added.)

[77] As stated by the Supreme Court in *Munusamy Vengadasalam v Public Prosecutor* [1987] 1 MLJ 492; [1987] 1 CLJ 250; [1987] CLJ Rep 221, evidence that is referred to in illustration (g) to s 114 of the Evidence Act must not only be relevant, it must be material.

[78] In my view, medical evidence was crucial to the facts of this case, as it could have supported the respondent's claim of having ED and his consequent inability to engage in sexual intercourse.

[79] On this note, reference was made to the case of *Sabah Shell Petroleum Co Ltd & Anor v The Owners of and/or Any Other Persons interested in the Ship or*

Vessel the 'Borcos Takdir' [2012] 5 MLJ 515; [2012] CLJU 1116; [2012] 1 LNS 1116, where it was stated by Nallini Pathmanathan J (now FCJ):

> ... *The person best placed to explain fully the events of the day would have been the Master but the Defendant failed to call the master as witness*. Stating that he was uncooperative. Given the importance of this witness' evidence, the defendant's failure to subpoena him led this court to conclude that the master's evidence if produced, would affect the defendant adversely. This was a fit and proper case for this court to draw an adverse inference under s 114(g) against the defendant. (Emphasis added.)

[80] Another key aspect of the evidence referenced in illustration (g) to s 114 of the Evidence Act is that an adverse inference is drawn only when evidence is deliberately withheld. Such deliberate withholding is inferred when there is no reasonable explanation for the failure to present the evidence: *Adel Muhammed El Dabbah v AG for Palestine* [1944] AC 156, *Murugan v Lew Chu Cheong* [1980] 2 MLJ 139; [1980] CLJU 49; [1980] 1 LNS 49, and *Marappan a/l Muthusamy v R Sivam a/l Ramasamy* [2014] 4 MLJ 428; [2013] CLJU 1381; [2013] 1 LNS 1381.

[81] The respondent was afforded ample time to obtain and adduce the necessary medical evidence to substantiate his claim of ED and its alleged impact, if any. The judicial separation petition was filed in October 2022, and the respondent engaged his solicitors in November 2022, subsequently filing his response to the judicial separation petition in February 2023. Furthermore, he was granted more than sufficient time to submit his bundle of documents well in advance of the full trial scheduled for August 2024. Despite this extended opportunity, no medical evidence was produced to validate his assertion of ED or its purported effects. The complete absence of any corroborative documentation significantly undermined the credibility of his claim.

[82] In this case, no explanation was provided for the respondent's failure to adduce medical evidence to corroborate his claim of ED. This absence of justification led to the inference that the evidence was deliberately withheld, likely due to concerns that it would be unfavourable to the respondent. Accordingly, I agreed with the petitioner that drawing an adverse inference from the respondent's failure to present a medical evidence was justified.

[83] The petitioner presented a more credible account when she explained that, as at early 2021, she had engaged in sexual intercourse with the respondent despite his assertions of having ED, although she categorically stated that he had experienced premature ejaculation.

[84] Therefore, given the complete lack of evidence supporting the respondent's claim of ED, or his alleged inability to engage in sexual intercourse due to this condition, if at all, I found it difficult to accept his assertion that such sexual intimacy was entirely impossible. In the absence of medical documentation, expert testimony, or any form of corroboration, his claim remained unsubstantiated, casting significant doubt on its credibility.

[85] It was contended that the respondent's decision to pursue IVF was driven by his ED and consequent inability to conceive a child with the co-respondent through natural means. However, I must categorically state that there is no automatic correlation between the ability to engage in sexual intercourse and the inability to impregnate a woman. The mere fact that a man is unable to father a child does not necessarily imply that he is incapable of sexual intercourse.

[86] Infertility can arise from a range of factors, and while the inability to engage in intercourse is one possible cause, it is far from the only one. A man may experience conditions that impact sperm quality, motility, or count, all of which can hinder conception, even if he is otherwise able to engage in sexual activity. Therefore, to equate infertility solely with an inability to perform intercourse would be an oversimplification of a complex medical condition. Given this, the respondent's assertion was untenable in the absence of medical evidence to support his claim.

[87] My observation of the co-respondent, was that she testified in a cavalier manner and, in my view, was well aware of the marital status of the respondent and the status of his family. However, in court, everything was denied and when it was not, she provided narratives that were an absolute farce, and an affront to common sense.

[88] This, coupled with the contradictions between her testimony and the undisputed WhatsApp messages between herself and the respondent, as well as the emails between herself and the personnel from the IVF Clinic, indicated that the relationship between the respondent and co-respondent was not only not platonic, but that their relationship was, in fact, a sexual one.

[89] In the final analysis, the explanation given by both respondent and co-respondent, in my view, was both unconvincing and detached from reality. In fact, the co-respondent's narrative seemed carefully constructed, almost as though it had been rehearsed, and lacked the authenticity that one might expect from someone providing a truthful account. Several elements of her testimony raised doubts, such as an overly consistent and polished delivery of details, which gave the impression that she was following a pre-determined script rather than recounting events as they naturally occurred.

[90] On the assessment and evaluation of the petitioner, I found her to be forthright and consistent. She did not mince her words or evade questions. In my view, she was earnest in her explanation, and did not strike me as someone whose evidence I had to view with circumspection. Although she had a tendency to veer into irrelevant matters, her evidence was intact, even after cross-examination. Discrepancies in her evidence, if at all, were minor, and on the whole, she was a convincing witness.

[91] The respondent's evidence, in stark contrast, was highly questionable and lacked any credible support for his assertions and claims. His testimony was riddled with inconsistencies, rendering his account unconvincing and implausible. Not only did he contradict himself on multiple occasions, but he also displayed a pattern of evasiveness, frequently avoiding direct answers to questions that might have placed him in an unfavourable light. When pressed on critical issues, he often feigned ignorance, further undermining his credibility.

[92] His demeanour during the proceedings was equally telling. While he was noticeably loud and abrasive when making disparaging remarks about the petitioner and the children, his tone shifted dramatically when defending the co-respondent — becoming even more forceful and insistent. This stark contrast in behaviour revealed a clear bias, suggesting that the respondent was not merely providing objective testimony but rather attempting to shield the co-respondent from scrutiny.

[93] The respondent's hostility when discussing his own family stood in sharp contrast to the passionate and almost defensive stance he adopted when speaking about the co-respondent. This behaviour further cast doubt on his claims of a purely platonic relationship with her and raised serious questions about his true motivations. Taken as a whole, the respondent's testimony lacked credibility, and his conduct during cross-examination only reinforced the impression that he was being far from truthful.

[94] When considered collectively, the following pieces of evidence, though circumstantial, painted a compelling and coherent narrative of an adulterous relationship between the respondent and the co-respondent. Each factor, when viewed in isolation, might have been open to alternative explanations, but together, led not only to a high degree of probability, but to an irresistible inference of adultery between the respondent and co-respondent:

(a) timeline and circumstances of interactions between the respondent and co-respondent;

(b) undisputed occasions and opportunities the respondent and co-respondent to have engaged in a sexual relationship;

A (c) shared residences between the respondent and co-respondent;

(d) overnight stays at the co-respondent's residence;

(e) shared accommodation in Singapore;

B (f) attempts to conceive through IVF;

(g) respondent's conduct in prioritising co-respondent over the petitioner;

(h) admission of adultery made by the respondent to the petitioner; and

C (i) evaluation of the petitioner, respondent and co-respondent as witnesses in court.

Whether petitioner was entitled to damages in amount of MYR200,000 from co-respondent

D **[95]** The power of the court to order the co-respondent to pay to the petitioner damages for adultery may be found in ss 58 and 59 of the Law Reform (Marriage and Divorce) Act, both of which read:

Section 58 — Damages for adultery may be claimed against co-respondent

E (1) On a petition for divorce in which adultery is alleged, or in the answer of a party to the marriage praying for divorce and alleging adultery, the party shall make the alleged adulterer or adulteress a co-respondent, unless excused by the court on special grounds from doing so.

F (2) A petition under subsection (1) *may include a prayer that the co-respondent be condemned in damages* in respect of the alleged adultery.

(3) Where damages have been claimed against a co-respondent —

(4) if, after the close of the evidence for the petitioner, the court is of the opinion that there is not sufficient evidence against the co-respondent to justify requiring him or her to reply, the co-respondent shall be discharged from the proceedings; or

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(5) if, at the conclusion of the hearing, the court is satisfied that adultery between the respondent and co-respondent has been proved, *the court may award the petitioner such damages as it may think fit*, but so that the award shall not include any exemplary or punitive element.

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...

Section 59 — Powers of court on claim to damages for adultery

I (1) The court may award damages against a co-respondent notwithstanding that the petition against the respondent is dismissed or adjourned.

(2) The court shall have power, when awarding damages, to direct that such damages or any part thereof, be vested in trustees upon trust to pay the income or capital thereof for the benefit of the minor children, if any, of

the marriage or, where the petitioner is required to pay maintenance to the respondent, in or towards the payment of such maintenance, and subject thereto in trust for the petitioner.

(3) Whenever in any petition presented by a husband the alleged adultery has been established against the co-respondent, *the court may order the co-respondent to pay the whole or any part of the costs of the proceedings*; provided that no such order for costs shall be made if the respondent was at the time of the adultery living apart from the husband and living the life of a prostitute or if the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman. (Emphasis added.)

[96] It must be borne in mind that the purpose of damages to be awarded to the petitioner is not to punish the co-respondent but is to compensate the petitioner. This was stated clearly by the Federal Court in *AJS v JMH and another appeal* [2022] 1 MLJ 778, in the following passages:

> *That damages for adultery when alleging breakdown of marriage is to compensate the victim-spouse (only the husband in old English law) and not to punish the co-respondent* is a point that can be hearkened back to the judgment of McCardie J in *Butterworth v Butterworth and Englefield* [1920] P 126 ('Butterworth') ... 45. The quantum of such compensation is not limited to pecuniary losses and will depend on the circumstances as explained in *Leow Kooi Wah v Ng Kok Seng Philip & Anor* [1995] 1 MLJ 852 at p 861; [1994] 1 LNS 278 at p 202, PBOA(l), wherein Mahadev Shankar J had held:
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> > The conclusion on this issue is that since adultery has been proved, P is eligible to damages against CR. The quantum of such damages will depend on all the circumstances of the case. Such damages. though compensatory. are not restricted to pecuniary loss. Since CR knew P and R were married when she committed adultery with R, that is an aggravation to be taken into account. The value of the spouse and the *injury to the aggrieved spouse's feelings will vary from case to case*, because such damages will be impossible to establish mathematically. (Emphasis added.)

[97] The awarding of damages to an aggrieved person in cases where a spouse has committed adultery is generally rooted in the principles of compensation for harm suffered due to the wrongful actions of another. I would add the following reasons for why damages are awarded against an aggrieved person for adultery committed by his or her spouse.

[98] *Emotional and psychological distress* — adultery often causes significant emotional trauma to the aggrieved spouse, including feelings of betrayal, humiliation, and loss of trust. The court may award damages to compensate for the mental anguish, depression, or anxiety suffered as a direct consequence of the adulterous relationship.

[99] *Loss of consortium* — consortium refers to the companionship, affection, and support that spouses are expected to provide each other in a marriage. Adultery disrupts this bond, depriving the aggrieved spouse of these benefits. Damages may be awarded to account for this loss.

[100] *Damage to reputation* — in some cases, the adulterous act may lead to public humiliation or damage the reputation of the aggrieved spouse, particularly in close-knit communities or professional environments. Courts may consider this reputational harm when determining damages.

[101] *Accountability* — damages may serve as a form of accountability for the adulterous spouse or their co-respondent. By awarding damages, the court underscores the moral and social breach caused by adultery, reaffirming the sanctity of marital commitments.

[102] *Economic impact* — adultery may have financial repercussions, such as costs related to separation, divorce proceedings, or therapy. Additionally, if the adulterous spouse diverts family resources to support their extramarital partner, it may lead to financial harm to the aggrieved spouse, which may be considered in awarding damages.

[103] In the present case, the co-respondent's admitted awareness of the respondent's marital status, his children, and even his grandchildren, significantly highlighted her disregard for the sanctity of the respondent's marriage and the emotional well-being of the petitioner. The fact that she was fully aware of the respondent's familial commitments and responsibilities made her actions all the more troubling. Despite this knowledge, she chose to persist in an adulterous relationship with the respondent, showing a clear and conscious decision to undermine the integrity of the marriage between the petitioner and respondent.

[104] The co-respondent's actions demonstrated a blatant disregard for the petitioner's feelings, her legal rights, and the stability of the family unit as a whole. It was not just an isolated act of infidelity but a sustained pattern of behaviour that revealed a lack of empathy and respect for the consequences of her actions on others. By continuing the adulterous relationship, the co-respondent exposed her complete indifference to the impact on the petitioner's emotional well-being, as well as her evident disregard for the sanctity of the familial bond that the respondent had with the petitioner and the children.

[105] Throughout the trial, the co-respondent maintained that the respondent had actively pursued the relationship, asserting that she did not reciprocate his romantic feelings. While it was evident that the respondent

played a significant role in the adulterous affair, it was equally important to recognise that, just as 'it takes two to tango', it only takes one to walk away. Unfortunately, the co-respondent chose not to do so, allowing the adulterous relationship to persist.

[106] Emails between the co-respondent and respondent were indicative that the former had actively urged the latter to divorce the petitioner, further destabilising the marriage between the petitioner and respondent, and eliminating any potential for reconciliation. This intentional interference highlighted the co-respondent's clear intent to solidify her place in the respondent's life, regardless of the harm it caused to the petitioner. Her actions reflected a calculated effort to prioritise her own interests over the well-being of the existing marriage and the emotional stability of the petitioner.

[107] The co-respondent's efforts to conceive a child with the respondent, through IVF, clearly demonstrated her intention to establish a permanent and unbreakable connection with him. This move was not merely about an adulterous affair but a deliberate attempt to create a lasting bond that would tie her to the respondent in an irreplaceable way. By pursuing the option of IVF, she sought to secure a future with the respondent, not just emotionally or romantically, but through the shared responsibility and legal ties that come with having a child together.

[108] Such actions were particularly significant because they had not only revealed the co-respondent's disregard for the sanctity of the respondent's marriage but also her determined effort to entrench herself in the respondent's life permanently, to the exclusion of the petitioner.

[109] In reaching my decision that the petitioner was entitled to damages from the co-respondent, I had to take into account the deep emotional and historical significance of the parties' 56-year relationship and 47-year marriage. This union was not just a partnership in name; it was a bond that had been built over decades of shared experiences, sacrifices, and mutual reliance. The respondent and the petitioner had navigated life's challenges together, supporting each other through both joyous and difficult times, and creating a foundation of trust and companionship that spanned nearly five decades. The fabric of their relationship was woven from countless moments, big and small, that defined their lives together.

[110] The respondent's adulterous relationship with the co-respondent, however, shattered this long-established bond in a way that could not be undone. The betrayal was not merely a breach of trust but a profound disruption to the emotional and psychological security the petitioner had once felt within the marriage.

[111] The petitioner, who had once relied on the respondent for financial support and security, now faced significant financial instability. Despite her years of sacrifice and contribution to the family's wealth during the marriage, she was now left without sufficient funds to support herself, especially as she entered her later years.

[112] The petitioner had been compelled to incur substantial legal expenses in her pursuit of justice and the protection of her rights. The financial strain placed upon her was evident in the fact that she was forced to borrow money from the children to fund these proceedings. This not only highlighted the dire nature of her financial predicament but also underscored the stark disparity between her financial position and that of the respondent. Unlike the petitioner, who struggled to secure the resources necessary to assert her legal rights, the respondent remained in a far more stable and advantageous financial situation, allowing him to navigate the proceedings without similar constraints.

[113] Furthermore, the respondent's dissipation of matrimonial assets and redirection of financial resources toward the co-respondent — including covering the co-respondent's legal fees — exacerbated the petitioner's financial insecurity. By prioritising the financial needs of the co-respondent over those of his lawful spouse, the respondent had effectively stripped the petitioner of her rightful access to marital resources, leaving her uncertain about her financial future. This reckless financial conduct not only deprived the petitioner of immediate financial security but also undermined the financial legacy she had envisioned passing down to the children.

[114] The situation was further aggravated by the respondent's deliberate movement and concealment of matrimonial assets overseas. The respondent was previously found in contempt of court for violating a court order issued in November 2022 ('the November 2022 court order'), which had prohibited him from dissipating matrimonial assets.

[115] His actions demonstrated a wilful and recalcitrant disregard for legal obligations. By defying the November 2022 court order, the respondent exhibited clear contempt for the authority of the judicial system.

[116] This evasive conduct introduced additional obstacles to the enforcement of any potential judgment in the petitioner's favour. Even if the court were to award her a fair share of the matrimonial assets, there was no guarantee that the respondent would comply with the judgment or that it would be enforceable in foreign jurisdictions where he had concealed matrimonial assets. As a result, the petitioner was left in a state of profound uncertainty, unable to confidently rely on the legal system to secure her rightful

entitlements. The combination of these factors created an overwhelming financial disadvantage for the petitioner, while the respondent's actions reflected a calculated effort to evade responsibility and deprive her of what she was justly owed.

[117] When considered as a whole, the evidence painted a compelling and troubling picture of the profound harm caused to, and loss suffered by the petitioner by the adulterous relationship between the respondent and the co-respondent. This harm extended far beyond emotional betrayal, manifesting in concrete and far-reaching consequences for the petitioner and the children.

[118] As such, I agreed with the petitioner's position that a sum of MYR200,000 to be paid to her by the co-respondent was both fair and reasonable. In addition to this, I also ordered the co-respondent to pay the petitioner legal costs amounting to MYR50,000. This was a necessary order, given the considerable financial burden the petitioner had incurred in pursuing her legal rights and seeking justice.

[119] Therefore, the total amount of MYR250,000 was ordered to be paid by the co-respondent to the petitioner within 30 days from the date this decision was delivered.

Whether spousal maintenance may be ordered in lump-sum

[120] In determining whether to award spousal maintenance to the petitioner, the court exercised its discretion not only by considering who was responsible for the breakdown of the marriage but also by applying the 'means and needs' test as set out in s 78 of the Law Reform (Marriage and Divorce) Act, which reads:

> Section 78 — Assessment of maintenance
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> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on *the means and needs of the parties*, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage. (Emphasis added.)

[121] In my evaluation of whether the petitioner was entitled to spousal maintenance, I found guidance in established legal precedents, specifically the cases of *Shameni Pillai a/p PB Rajedran v S Arulselvam a/l Sanggilly and Rafidah bt Mat Taib* [2011] 6 CLJ 782, and *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474. These cases underscore the importance of considering the following key factors:

A (a) the income, earning capacity, property, or financial resources that each party presently possesses or is likely to possess in the foreseeable future;

(b) the financial needs, obligations, and responsibilities that each party currently or is likely to have in the foreseeable future;

B (c) the standard of living enjoyed by the family prior to the breakdown of the marriage;

(d) the age of each party and the duration of their marriage;

(e) any existing health, physical, or mental disability of the parties;

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(f) the respective contributions made by each party to the welfare of the family; and

(g) the duration of the marriage.

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[122] The petitioner demanded a lump-sum of MYR1.92m, calculated based on a monthly payment of MYR8,000 for a duration of 240 months (20 years). In contrast, the respondent relied on the May 2023 interim court order, which mandated a monthly payment of MYR3,000.

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[123] Whilst I was mindful that the Law Reform (Marriage and Divorce) Act does not currently encompass a provision for the disbursement of spousal maintenance in the form of lump-sum payments unless agreed upon by the parties and approved by the court pursuant to s 80 of the Law Reform (Marriage and Divorce) Act, the court's attention was brought to the case of *Chaw Anui v Tan Kim Chai* [2004] 4 MLJ 272; [2004] CLJU 260; [2004] 1 LNS 260; [2004] 5 AMR 671. In that case, it was the view of Low Hop Bing J (as he then was) after referring to the situation in the United Kingdom and Singapore, that courts in Malaysia may make an award of spousal maintenance by way of lump-sum payment. In the following passages, His Lordship clarified:

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> 69. At this stage, it is appropriate to consider the power of the courts in the United Kingdom, Singapore, and Malaysia in making a maintenance order by way of a lump-sum payment.
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> 70. In the United Kingdom, the power to order a lump-sum payment is contained in s 2(1)(c) of the Matrimonial Proceedings and Property Act 1970; and has been ordered, eg in *Wachtel v Wachtel* [1973] 1 All ER 829; *Preston v Preston* [1982] 2 All ER 41 (CA); and *Minton v Minton* [1979] AC 593.
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> 71. In Singapore, s 109(1) of the Women's Charter provides that a maintenance order may provide for the payment of a lump-sum or such periodical payment as the court may determine, and so awards of a lump-sum payment have been made, eg in *Jacqueline Bey v Edmond Lee Yok Lung* [1988] 2 MLJ 335; [1988] 2 CLJ Rep 760 per Chua J; Louis Pius Gilbert v Louis Anne Lise [2000] 1 SLR 274 per Goh Joon Seng J; *Koh Kim Lian Angela v Choong Kian Haw* [1994] 1 SLR 22 Singapore (CA),

per Karthigesu JA; and *Lee Puey Hwa v Tay Cheow Seng* [1991] 3 MLJ 1; [1991] 4 CLJ Rep 545 (CA) per Yong Pung How CJ.

72. In Malaysia, under s 77(1)(a), our High Court may order a man to pay maintenance to his wife or former wife during the course of any proceedings under the Act. In my view, the power to make such an order is not confined to the award of maintenance by periodical payments only. Section 77(1)(a) contains no restrictive or prohibitive words to support the contention for the husband. The *discretionary power of the court under s 77(1)(a) is unfettered in the sense that our court is empowered to make an award of maintenance by way of a lump-sum payment having regard to the facts and circumstances prevailing in a particular case and established judicial principles*.

73. Such lump-sum payments have been made, eg:

(a) in *SS v HJK* [1991] MLJU 18; [1991] CLJU 99; [1991] 1 LNS 99 per Mahadev Shankar J (later JCA) by way of a 'clean break';

(b) *Leow Kooi Wah v Philip Ng Kok Seng & Anor* [1997] 3 MLJ 133; [1997] CLJU 419 per Mahadev Shankar J (later JCA) to assist the wife to maintain herself and the children of the family and not as a separate head of entitlement, but a different method of providing for the immediate requirements of the deserving spouse and the children where the circumstances so require;

(c) *V Sandrasagaran Veerapan Raman v Dettarassar Veletine Souvina Marie* [1995] 5 CLJ 474 per Faiza Tamby Chik J by applying the 'clean break' principle; and

(d) *Tham Yin Kee (P) v Lim Hee Peng* [2002] MLJU 185; [2002] CLJU 9; [2002] 1 LNS 9 per Rahman Hussain J (now FCJ).

74. Hence, there are abundant authorities to the effect that the courts in England, Singapore and our country may make an award of maintenance by way of a lump-sum payment. (Emphasis added.)

[124] In the present case, I concluded that instead of an ongoing monthly spousal maintenance, the petitioner was entitled to receive a lump-sum payment, for the following reasons.

[125] First, the petitioner's advanced age at the time of the trial was a significant consideration. At over 72 years old, it was neither practical nor sustainable for her to rely on monthly payments over an extended period. A lump-sum payment, on the other hand, would provide her with financial certainty and security during her later years, eliminating the ongoing uncertainty of receiving regular payments and sparing her the potential strain of pursuing enforcement if those payments were delayed or withheld.

[126] Secondly, I firmly believed that a complete and final separation between the parties was the most beneficial course of action. The emotional turmoil

A experienced by the petitioner was undeniable, largely stemming from the respondent's actions, particularly his involvement with the co-respondent. This entanglement not only deepened the petitioner's emotional distress but also intensified tensions between the parties, making any form of continued interaction untenable.

B

[127] Furthermore, the trial itself became an additional source of emotional suffering for the petitioner. During cross-examination, the respondent's declaration of love for the co-respondent could only be seen as inflicting further pain on the petitioner, reinforcing the depth of her anguish. The respondent's C blatant lack of remorse or acknowledgment of the suffering he had inflicted on both the petitioner and the children was deeply reprehensible. His cold indifference not only confirmed the petitioner's worst fears but also intensified her emotional distress, displaying a complete disregard for the consequences of his actions.

D

[128] In addition, it was indisputable that the respondent was estranged from the children, who, without question, sympathised with the petitioner, further highlighting the deeply fractured familial relationships. While I would not E condone the terms used by the children, such as 'money-digger' or 'gold-digger,' to describe the co-respondent, I could understand the deep-seated hostility and resentment the children felt. The unprincipled conduct of the respondent and the co-respondent, particularly the adulterous relationship between an older man and a woman half his age, who, notably, was F younger than most of the children themselves — was undoubtedly a source of great distress and confusion for them.

[129] Requiring the respondent to make monthly payments, therefore, would only serve to prolong the contentious relationship between the parties. A G lump-sum payment, on the other hand, would allow both petitioner and respondent to move forward independently, minimising the potential for future disputes and ongoing emotional harm.

[130] Thirdly, the respondent's established pattern of non-compliance with H court orders made it clear that ongoing payments would likely present enforcement challenges. He had already been found in contempt of court for defying the November 2022 court order, which had prohibited him from dissipating matrimonial assets, demonstrating a wilful and recalcitrant disregard for legal obligations. His blatant non-compliance and dismissive I attitude toward the authority of the court reinforced the likelihood that he would fail to adhere to any arrangement requiring regular payments.

[131] Given these circumstances, it was my view that a lump-sum payment was not only a more practical and fair solution, but also one that aligned with

the interests of justice. It ensured the petitioner would receive the financial support she was entitled to without the risk of future enforcement issues and allowed both parties to sever their ties, thereby enabling a more definitive resolution of their financial relationship.

Whether petitioner had fulfilled the 'means and needs' assessment

[132] The petitioner sought a lump-sum payment of MYR1.92m, calculated on a rounded monthly amount of MYR8,000 over a period of 240 months (20 years). A detailed breakdown of this monthly amount was provided in Table A below:

Table A

No	Items	Monthly Amount (MYR)
1	Groceries / Food	2,000
2	Medical (Acupuncture RM132 per week)	528
3	Blood Test (MYR176 per year)	14.67
4	Physiotherapy (MYR223 per week)	892
5	Orthopaedic (MYR300 per week)	1,200
6	Supplements	300
7	Electricity	400
8	Water	40
9	Assessment Tax (MYR1,008 per year)	84
10	Quit rent (MYR109.00 per year) 9.08	9.08
11	Unifi bill	136.75
12	Mobile phone	31.80
13	Indah Water (MYR144 per year)	12
14	Indoor water filter (MYR299 per year)	24.92
15	Petrol (MYR78 weekly)	312
16	Car maintenance (MYR2,039 per year)	169.92
17	Car insurance (MYR118 per year)	9.83
18	Driving licence (MYR30 per year)	2.50
19	Toll/Parking (Touch & Go)	50
20	Car Wash (MYR12 biweekly)	24
21	Road Tax (MYR22.50 per year)	1.88
22	Dental (MYR318 per year)	26.50
23	Part-time cleaner (MYR150 per week)	600
24	Aircon maintenance (MYR840 per year)	70
25	Pest Control (MYR850 per year)	70.83
	Total	7,310.68

[133] Although I agreed that a lump-sum payment was justified, I disagreed with the proposed monthly amount of MYR8,000 for the following reasons.

[134] Some of the expenses claimed by the petitioner were unreasonably high. In particular, the cost of groceries and food appeared inflated, especially since some of the children were still having meals at the matrimonial home where the petitioner was residing ('the matrimonial home'). As adults, if the children choose to spend time or live with the petitioner, they should contribute to household expenses rather than relying entirely on the petitioner to cover their meal costs. It would be unfair to expect the respondent to continue financially supporting the children, bearing in mind that they are adults. Consequently, the cost for groceries and food in item No 1 was adjusted to MYR1,000, while the electricity bill in item No 7 was reduced from MYR400 to MYR200.

[135] I had also reduced the cost of the part-time cleaner in item No 23 from MYR600 to MYR300, as I believed that some of the children, who were still intermittently staying with the petitioner, could either handle the cleaning themselves or contribute to the cost of the part-time cleaner. It would be unreasonable to require the respondent to cover the cost of cleaning up after the children.

[136] The petitioner also claimed an annual cost of MYR840 for air conditioning servicing in item No 24 and MYR850 for pest control in item No 25. I found these expenses to be related to the general upkeep of the house where the petitioner resided, which was also occasionally occupied by the children. As such, I removed both amounts from the petitioner's spousal maintenance claim.

[137] Additionally, I took the position that acupuncture sessions in item No 2 at MYR528 monthly were not necessary. While acupuncture may offer benefits for certain conditions, it is a complementary therapy rather than an essential medical expense. The respondent could not be expected to cover the cost of the petitioner's non-essential treatments.

[138] After eliminating unnecessary expenses and adjusting certain figures, the actual amount required for the petitioner's monthly spousal maintenance was MYR5,142, which, when rounded, amounted to approximately MYR5,000.

[139] The respondent maintained that MYR3,000 was sufficient, as this was the amount ordered by the court in the May 2023 court order. While it was undisputed that this was the previously ordered sum, that decision was made before the full trial of the judicial separation petition. In the present case, after concluding that the respondent was responsible for the breakdown of the

marriage, I took this into account in my assessment and found it appropriate to increase the petitioner's monthly spousal maintenance from MYR3,000 to MYR5,000.

[140] Having decided that the petitioner's monthly spousal maintenance should be MYR5,000, the petitioner argued that the lump-sum payment should be calculated by multiplying this amount by 240 months, equivalent to 20 years.

[141] I found this approach to be untenable. Instead, I based my calculation on the average between the petitioner's current age and the typical life expectancy of an ethnic Chinese female in Malaysia, which is approximately 80 years.

[142] At the time the decision was delivered, the petitioner was 72 years and seven months old. Using this approach, I decided that spousal maintenance should be calculated up to the petitioner's 76th birthday, which amounted to 41 months. This method ensured that the lump-sum payment remained reasonable, proportionate, and aligned with practical considerations regarding the petitioner's age and expected lifespan.

[143] Applying the monthly amount of MYR5,000 over the 41-month period calculated, the total lump-sum spousal maintenance payable to the petitioner amounted to MYR205,000. The respondent was ordered to make full payment of this amount to the petitioner within 30 days from the date this decision was delivered.

THE MATRIMONIAL ASSETS

[144] The petitioner asserted that the assets listed in the following Table B (with specific details omitted for privacy reasons) should be divided equally between the parties, ensuring a fair and just distribution of the matrimonial assets:

Table B

No	Asset	Estimated Amount (in MYR)	Dissipated by the respondent during the trial
1	The matrimonial home which was in Subang Jaya	2m	

No	Asset	Estimated Amount (in MYR)	Dissipated by the respondent during the trial
2	Property known as the Nilai Shop lot	250,000	
3	Property known as the Emville Leasehold Land	187,760	
4	Company known as Angkasa Nusantara where petitioner holds 50,000 shares, whilst respondent holds 2,250,000 shares	8m in assets	
5	Company known as Sistem 7G Sdn Bhd where respondent holds 1,950,000 shares	2m in paid up capital	
6	Gold bullion (91.33kg), silver bullion (2,729.583), silver coins (59.4953kg), silver bullion (aa.0622kg)		30m (admitted by the respondent)
7	Two UOB gold certificates totalling 7kg	1,694,255.85	
8	Gold coins at home (8 x 1oz)	61,040	
9	Nine silver coins at home (49 x 2oz), (138 x 1oz)	21,420	
10	Gold ingots (6 x 10oz)	461,160.00	
11	Maybank Account No held by Sistem 7G	7,993.57 as at 31 March 2023	
12	Public Bank Account No held by Sistem 7G	3,665.90 as at 31 March 2023	
13 & 14	Two UOB Savings accounts	Approx 623,928.10 (equivalent of SGD189,069.12) as at 31 March 2023	
15	UOB Stash Account under the respondent's name	71,397.86 as at 31 March 2023	
16	UOB My Account	600,000	
17	Public Bank Account in respondent's name	33,065.75 as at 23 March 2023	

No	Asset	Estimated Amount (in MYR)	Dissipated by the respondent during the trial
18	Public Bank Account No in parties' joint names	53.09 as at 22 March 2023	32,000 as at 21 and 23 November 2022
19	DBS Bank Account Savings Account	SGD115.57	
20	DBS Autosave Account	SGD1,768.03 as at 31 March 2023	
21	DBS Joint Account with Christabel	7,700	SGD15,000 as at 27 October 2022, SGD15,000 and SGD51,000 as at 21 and 23 November 2022
22	DBS Vickers Securities Account	Approx 18,866,38, 3.80 and 18,497.00 (HKD34,333.72, SGD1.15 and USD4,298 .20) as at 28 February 2023	
23	SGX Account statement	Approx 114,075.50 (SGD34,568.331)	
24	DBS Vickers Securities Zhaojin Mining Industry-H		
25	Public Bank Account belonging to the respondent	487,608.44 as at 21 March 2023	
26	Maybank Account No under Angkasa Nusantara	165,105.17 as at 21 March 2023	

No	Asset	Estimated Amount (in MYR)	Dissipated by the respondent during the trial
27	162–3–3 Kiara Park Condominium, Jalan Burhanuddin Helmi, 60000 Kuala Lumpur ('Kiara Park') Acquired in May 2024		720,000
	Estimated Total	16,834,703	31,019,300

[145] The task of dividing matrimonial assets is prescribed by s 76 of the Law Reform (Marriage and Divorce) Act), which reads:

> Section 76 — Power of court to order division of matrimonial assets
>
> (1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any *assets acquired by them during the marriage* or the *sale of any such assets* and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1) the court shall have regard to —
> (a) *the extent of the contributions made by each party in money, property or work towards the acquiring of the assets* or payment of expenses for the benefit of the family;
> (aa) *the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family* by looking after the home or caring for the family;
> (b) any debts owing by either party which were contracted for their joint benefit;
> (c) the needs of the minor children, if any, of the marriage;
> (d) *the duration of the marriage,*
>
> (3) and subject to those considerations, the court shall incline towards equality of division.
>
> (4) ...
>
> (5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts. (Emphasis added.)

[146] Section 76 of the Law Reform (Marriage and Divorce) Act was amended vide Law Reform (Marriage and Divorce) (Amendment) Act 2017 (Act A1546) with the clear objective of providing greater security and fairness to wives within the framework of matrimonial assets division.

[147] These amendments which took effect from 15 December 2018 aimed to acknowledge and give legal recognition to the often-overlooked non-financial contributions wives made during the course of a marriage. Specifically, it addressed situations where wives, as primary caregivers and homemakers, sacrificed their careers, financial independence, and personal growth for the betterment of the family unit.

[148] In my view, the classification of assets as matrimonial cannot solely be determined by registered ownership. Drawing insight from the pertinent case of *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109; [1997] 1 CLJ 375, Gopal Sri Ram JCA (as he then was) provided a definition of 'matrimonial assets'. In that case, he outlined the concept beyond mere ownership, emphasising factors that contribute to the matrimonial assets. The following passage from the case serves as a guiding principle in understanding the broader scope of matrimonial assets:

> The Act does not define what matrimonial assets are. We think that during the subsistence of a marriage *the expression refers to the matrimonial home and everything which is put into it by either spouse with the intention that their home and chattels should be a continuing resource for the spouses and their children to be used jointly and severally for the benefit of the family as a whole. It matters not in this context whether the asset is acquired solely by the one party or the other or by their joint efforts*. Whilst the marriage subsists these assets are matrimonial assets. Such assets could be capital assets. The earning power of each spouse is also an asset. (Emphasis added.)

Whether assets acquired by the respondent during marriage stemmed from his inheritance

[149] The respondent's primary argument revolved around his assertion that the wealth and assets acquired stemmed entirely from an inheritance of a mere MYR440,000, which he received following the passing of his late father in 1957. He claimed that this inherited sum served as the initial capital for the establishment of his company, Bestin (B) Sdn Bhd ('Bestin'), in Brunei, sometime in 1990.

[150] According to the respondent, Bestin flourished under his management, experiencing substantial growth and profitability over the years. This financial success, he maintained, was the driving force behind the expansion of his personal wealth, ultimately allowing him to acquire the assets. He emphasised that these assets were a direct result of his business acumen and prudent financial management rather than any contributions from the petitioner or external sources.

[151] In 1995, in preparation for his return to Malaysia, the respondent established a company in Malaysia called Angkasa Nusantara, using a portion

of his earnings from Bestin. The petitioner was also appointed as a director and shareholder of Angkasa Nusantara; however, she did not receive any salary or income, as Angkasa Nusantara retained all earnings.

[152] The respondent admitted that it was through Bestin that what was once an inheritance of a mere MYR440,000 grew to around BND9.8m in 2013. This was a result of investment of earnings from Bestin in stocks, mutual funds and precious metals and immoveable property which were now held by Angkasa Nusantara. He claimed to have opened an account in 2009 with Certis Cisco, to store the bullions he had purchased, amounting to 91.33kg gold and 2,833.14kg silver.

[153] It was, therefore, undeniable that while the respondent had indeed inherited MYR440,000, the assets had in fact undergone significant transformation over time. These assets had been intermingled with acquisitions made during the course of the marriage and were utilised for the benefit of the respondent, petitioner and the children. As a result, the original inheritance could no longer be distinctly identified or traced to its initial form. Given this commingling and the nature of the assets' integration into the matrimonial estate, I was of the view that they should be treated as part of the shared matrimonial assets rather than as solely derived from the respondent's inheritance. This reflected the principle that once inherited funds are invested, transformed, or used to acquire shared assets during a marriage, they often lose their separate identity and become part of the matrimonial pool.

[154] The respondent repeatedly emphasised his estranged relationship with the children as a key reason for refusing to share the matrimonial assets with the petitioner. He expressed concern that the petitioner might distribute the matrimonial assets among the children, with whom he had a fractured relationship. However, the court found this argument unconvincing and irrelevant to the issue of equitable division of matrimonial property.

[155] The court firmly clarified that the matter under consideration was a dispute solely between the respondent and the petitioner regarding the division of matrimonial assets. It was emphasised that the respondent's estranged relationship with the children was irrelevant to the proceedings and outside the court's jurisdiction. The dynamics between the respondent and the children, no matter how contentious, were not factors to be considered in the equitable division of matrimonial assets between the petitioner and respondent. The focus of the court was strictly on ensuring fairness in the division of property as it pertained to the marital relationship.

[156] Additionally, the court recognised the petitioner as a rightful party in the division of matrimonial assets and affirmed her autonomy to decide what to

do with her share once awarded. Whether the petitioner chose to share the property with the children was entirely her prerogative and did not diminish her entitlement to an equitable portion of matrimonial assets.

[157] Lastly, the court acknowledged that the children's estrangement from the respondent was a direct consequence of his own conduct, specifically his public flaunting of the co-respondent, which understandably led to feelings of betrayal and resentment. The respondent's strained relationship with the children, therefore, could not be used to justify denying the petitioner her rightful share of the matrimonial assets. This decision underscored the court's commitment to fairness and its refusal to let irrelevant personal grievances influence the division of matrimonial assets.

Whether an arrangement existed regarding division of matrimonial assets

[158] The respondent referred to a document that he claimed was his will, asserting that it outlined the financial arrangements he had made for the children, including the petitioner. I could not accept the respondent's reliance on this will as a marital agreement for the following reasons.

[159] Firstly, the 'will' referenced by the respondent appeared highly questionable. The bundle of documents filed by the respondent contained two versions of the 'will', raising concerns about its authenticity and reliability. One version was neither signed nor witnessed, undermining its validity entirely. The other version, while signed and witnessed, was improperly attested. It included only one witness, contrary to legal requirements, and lacked critical identifying details such as the witness's name and NRIC number. These deficiencies had cast significant doubt on the credibility and enforceability of the 'will' as a legitimate document.

[160] Secondly, a will cannot be considered an agreement because it is inherently a unilateral document created solely by the testator. Unlike an agreement, which requires the mutual consent of all parties involved, a will is drafted based on the testator's intentions and decisions without any obligation to obtain the approval or consent of the named beneficiaries or other stakeholders. This fundamental lack of consensus and reciprocity distinguishes a will from a legally binding agreement, which relies on mutual understanding and acceptance between the parties. Consequently, relying on a will as if it were an agreement is both legally and conceptually flawed.

[161] Hence, this purported 'will', relied upon by the respondent, could not be taken into account in determining the petitioner's share of the matrimonial assets.

Whether court should adopt a feminist approach to division of matrimonial assets

[162] The petitioner sought to strengthen her claim for an equal division of matrimonial assets by invoking art 8 of the Federal Constitution, which enshrines the principle of equality before the law and equal protection under the law. The petitioner argued that, as a wife and homemaker who dedicated decades to raising the children and supporting the respondent's career and businesses, she should not be placed at a financial disadvantage simply because she was not the primary breadwinner. Article 8 of the Federal Constitution reads:

> Article 8 — Equality
>
> (1) All persons are *equal before the law* and entitled to the equal protection of the law.
>
> (2) Except as expressly authorised by this Constitution, there shall *be no discrimination* against citizens *on the ground only of* religion, race, descent, place of birth or *gender* in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
>
> ... (Emphasis added.)

[163] The petitioner contended that this constitutional principle aligned with the feminist approach, emphasising the need to address systemic inequalities that often disadvantage women in property division. Traditional frameworks, she argued, tend to undervalue non-financial contributions such as caregiving, household management, and emotional labour, despite these being critical to the success and well-being of the family unit.

[164] Relying on art 8 of the Federal Constitution, the petitioner highlighted that equal treatment under the law should extend to recognising both financial and non-financial contributions made during a marriage. She argued that the sacrifices made by wives — such as giving up career opportunities or economic independence for the benefit of the family — must be acknowledged to ensure true equality. An equal division of matrimonial assets, the petitioner asserted, would reflect a just and equitable approach that respects the constitutional guarantee of equality, and rectifies the traditional undervaluation of women's roles within the family.

[165] It was essential to emphasise that while this court recognised the heightened vulnerability of women and children, the primary role of the Family Court is to provide redress that allows all parties, regardless of gender, to move forward in the most equitable manner possible.

[166] A feminist perspective, while valuable in addressing systemic inequalities and recognising the unique challenges faced by women, would not be applicable in all cases before the court. This is because a feminist approach is an ideology, rather than a structured legal framework based on objective principles of fairness and equity. While feminism advocates for gender equality and often seeks to address historical disparities, the law must remain neutral and impartial, ensuring that decisions are based on individual circumstances, contributions, and needs, rather than ideological assumptions. Unlike established legal doctrines such as equitable distribution of matrimonial assets, which are grounded in statutes and precedents, a feminist approach risks favouring one gender over the other, undermining the core principle of justice for all. Courts must apply fair and consistent legal principles rather than aligning with any subjective social or political ideology.

[167] Family law has evolved to recognise the changing dynamics of marriage, including working spouses, stay-at-home fathers, and dual-income families. Applying a feminist lens would indiscriminately risk creating an impression of bias, suggesting that the court may automatically favour the wife regardless of the specifics of the situation. This perception would undermine the fundamental principle of impartiality, which is central to the administration of justice.

[168] The role of the court is to ensure that every decision is based on a comprehensive and objective assessment of the facts and circumstances of each case, rather than relying on preconceived notions or generalisations about gender roles. A one-size-fits-all approach would be inadequate, as it would fail to acknowledge the complexities and nuances that shape each case. A thorough and individualised assessment would help prevent injustices and would ensure that legal rulings accurately reflect the realities of each case.

[169] Therefore, I was of the view that it was essential to adopt a fair rather than a feminist approach to the distribution of matrimonial assets.

Whether petitioner was entitled to half the value of matrimonial assets

[170] In this case, while I did not subscribe to the feminist approach to matrimonial asset distribution, I eventually agreed with the petitioner that, based on the evidence adduced, the matrimonial assets should be divided equally between the petitioner and respondent for the following reasons.

[171] *Direct and indirect contributions* — while the respondent contended that the petitioner made no financial contributions to the family companies' gains or losses, it was crucial to consider the broader context. Her lack of financial involvement was not a matter of choice or reluctance but rather a

consequence of her circumstances. She had sacrificed her professional career and forwent any entitlement to a salary or dividends from the family businesses, placing her trust in the respondent's assurance that he would provide for her and the children. Thus, her contributions, though non-monetary, were significant and should not be overlooked in assessing the division of matrimonial assets.

[172] *Contributions to the welfare of the family* — the petitioner's unwavering dedication to the welfare of the family was another critical consideration. Raising six children and supporting three grandchildren over the years required immense time, energy, and commitment. Her role extended beyond parenting to nurturing a cohesive family environment, ensuring the children's education, and providing moral and emotional guidance. This substantial contribution played an indispensable role in building a strong family foundation and creating stability that allowed the respondent to focus on his business ventures.

[173] Evidence was also presented to demonstrate that the petitioner had been the caregiver for the respondent during periods when he was unwell or otherwise indisposed. This included instances where the petitioner provided physical, and emotional support to ensure the respondent's well-being. Such evidence reinforced the petitioner's significant role in the marriage, highlighting the extent of her contributions beyond traditional financial means and underscoring her commitment to the respondent's welfare during times of need.

[174] On this point, I drew guidance from the case of *Poonageswari a/p P Krishnan v Bailand a/l Govindham* [2019] MLJU 448; [2019] 1 LNS 688, where it was stated:

> In so far as s 76 LRA 1976 is concerned, the objective of the amendments was to *provide better security to the position of wives and to give due recognition to their contribution in kind by taking care of the home and its members, some who may even had to give up their salaried employment and whatever career advancements or opportunities they had in order to take care of the family*. In other words, the sacrifices made by the fairer sex for the well-being of the family, especially the nuclear family unit, are not in vain. (Emphasis added.)

[175] *Sacrifices for the respondent's business ventures* — over nearly five decades, the petitioner made undeniable sacrifices to support the respondent's professional and business success. These sacrifices likely included relinquishing personal career opportunities, taking on greater household responsibilities, and enduring prolonged periods of stress and uncertainty tied to the respondent's pursuits. While these contributions may not be quantified in financial terms, they were essential to the respondent's achievements and the accumulation of their shared wealth.

[176] *Longevity of the marriage* — a union that lasted almost five decades represented a lifetime of shared efforts, challenges, and accomplishments. The petitioner's contributions spanned nearly half a century, during which she worked alongside the respondent to create and sustain their shared assets and family life. The length of this marriage amplified the importance of recognising and honouring the petitioner's contributions equitably.

[177] Fairness and equity in asset division — in matrimonial proceedings, fairness dictates that both parties should be adequately compensated for their contributions, regardless of whether those contributions were financial or non-financial. By awarding the petitioner 50% of the value of the matrimonial assets, the court acknowledged her immense role in the success and stability of the family and ensured she received her rightful share of the assets accumulated during the marriage.

[178] I was also guided by the Court of Appeal in *Annathurai a/l Venkidasalam v Vani a/p Welluven* [2023] MLJU 2442; [2023] CLJU 2191 where Lim Chong Fong JCA had opined in the following passages:

> ...
>
> [18] In re-visiting s 76 of the LRA, and we make the following observations:
>
> ...
>
> (ii) The division is at the discretion of the court but the court must take into account the factors listed in s 76(2)(a) to (e) of the LRA;
>
> (iii) *There is no prohibition on the court to also take into account other relevant or appropriate circumstances* because the aforesaid factors have not been expressly specified in s 76(1) and (2) of the LRA as exclusive and/or exhaustive, see *Dean v Wiesengrund* [1955] 2 QB 120 and *S (a minor) v Special Education Needs Tribunal* [1996] 1 All ER 171; and
>
> (iv) *The division is not an exercise of strict financial accounting but a fair and equitable distribution of the matrimonial property and assets as determined by the court.*
>
> [19] Therefore, there is no strait-jacket solution. *Each and every case has to be determined on its peculiar facts and circumstances.* (Emphasis added.)

[179] *Respondent's coduct* — I, therefore, had to consider the undisputed fact that the respondent had wilfully and blatantly violated the November 2022 court order by deliberately dissipating matrimonial assets he was explicitly prohibited from disposing of. Despite clear directives against the dissipation of specific assets — including gold bullion, gold ingots, gold coins, and silver coins — he knowingly disregarded these orders. The November 2022 court order was intended to preserve the integrity of the matrimonial assets and ensure a fair division of matrimonial assets during the proceedings.

[180] This blatant disregard for the court's authority undermined the judicial process and demonstrated a deliberate attempt to circumvent the legal framework governing the case.

[181] As a consequence of his actions, a committal application was filed against him for contempt of court. In September 2024, the respondent was found guilty of contempt of court due to his non-compliance with the November 2022 court order. As a penalty for his actions, he was fined MYR20,000.

[182] This sequence of events underscored the respondent's disregard for judicial directives and highlighted the seriousness with which the court viewed such breaches. The deliberate dissipation of matrimonial assets had not only violated the rights of the petitioner, it had also disrupted the equitable resolution of the matrimonial dispute.

[183] The petitioner's sacrifices and efforts, spanning decades, were instrumental in creating an environment that allowed the respondent to thrive professionally. It was also relevant to note that the domestic arrangements between the petitioner and respondent were longstanding and consistent until the co-respondent entered the picture, disrupting the established dynamic. Ignoring these contributions would result in an incomplete and unjust assessment of her role and entitlement within the marriage.

[184] As such, all assets listed in Table B are to be divided between the petitioner and respondent in the following manner.

[185] *Immoveable assets* — the petitioner was entitled to half of the realisable value of the immovable assets listed under any of item Nos 2, 3, and 27 of Table B, which are solely registered in the respondent's name. This would include any asset dissipated by the respondent since January 2021.

[186] In the situation where an immovable asset is jointly owned by both the petitioner and the respondent, each party will be granted the opportunity to buy out the other's share at a fair market value. If neither party exercises this option, the property must be sold, and the proceeds, after deducting any outstanding liabilities, taxes, or necessary transaction costs, will be divided equally between them. This would ensure a fair and equitable distribution of matrimonial assets while allowing both parties the chance to retain ownership if they so choose.

[187] With regard to the matrimonial home listed in item No 1 of Table B, the respondent was required to transfer his half-share of the property to the petitioner, thereby granting her full ownership. The value of this transferred

share will then be deducted from the total amount owed to the petitioner as part of the overall division of matrimonial assets. This arrangement would ensure that the petitioner receives a fair portion of the matrimonial assets while also allowing her to retain the matrimonial home, which may hold significant emotional and practical importance. By offsetting the value of the respondent's half-share against the petitioner's entitlement, this approach would facilitate an equitable distribution without requiring additional financial exchanges between the parties.

[188] *Gold/silver* — the petitioner was entitled to half the value of the gold and silver bars, bullion, and coins listed in item Nos 6, 7, 8, 9, and 10 of Table B. This valuation shall also account for any gold and silver that the respondent dissipated in violation of the November 2022 court order.

[189] *Companies* — the petitioner was entitled to half the value of the companies listed in item Nos 4 and 5 of Table B. Additionally, the current assets of the companies specified in item Nos 11, 12, and 26 will be included in the valuation of these companies.

[190] Independent valuers will be appointed to assess the immovable assets, as well as the gold and silver, while an auditor will be engaged to evaluate the companies.

[191] The solicitors representing both the petitioner and the respondent will jointly determine the selection and appointment process for the valuers and auditor. However, the costs for these professional services will be borne by the respondent.

[192] *Monies in accounts* — with the exception of joint accounts held by both the petitioner and the respondent, the petitioner is entitled to half of the funds, limited to those currently held in accounts solely in the respondent's name.

CONCLUSION

[193] In the upshot, based on the aforesaid reasons, and after careful scrutiny of all the evidence before this court, both oral and documentary, and submissions of all parties, the judicial separation petition was decided in the following manner:

(a) judicial separation was granted with immediate effect;

(b) the respondent was ordered to pay the petitioner a lump-sum spousal maintenance of MYR205,000, together with costs of MYR50,000 (subject to allocatur), within 30 days from the date of this decision;

A (c) the co-respondent was ordered to pay the petitioner damages amounting to MYR200,000, together with costs of MYR50,000 (subject to allocatur), within 30 days from the date of this decision; and

(d) all assets listed in Table B were to be divided in accordance with the terms set out above;

B

Order accordingly.

Reported by Dzulqarnain Ab Fatar

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